

The Washington State **Prevailing Wage Law**



*Understand your responsibilities and
rights when performing public work.*

October 2014 Edition



Washington State Department of
Labor & Industries

Prevailing Wage Program

NOTICE

This document contains sections of the Revised Code of Washington (laws) and the Washington Administrative Code (WAC rules) that are current as of the date shown on the front cover. Changes to laws and/or rules may occur in legislative sessions or departmental rule activities. Please research the most current language of the laws, which is available at **search.leg.wa.gov**. You may also contact the Prevailing Wage Program to obtain the most current laws.

Contact information is available at the back of this booklet.

Cover photo courtesy of WSDOT.



STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES

Prevailing Wage

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Dear Reader:

The Prevailing Wages on Public Works Act (Chapter 39.12 RCW) requires that employees of government contractors be paid prevailing wages for all public work. Agencies awarding public work contracts include state agencies, counties, municipalities and all political subdivisions of the state.

We ask that you help us better serve workers, contractors and public agencies and comply with these requirements.

This booklet will help you better understand the law and applicable rules. Section 1, the Plain Language Description, explains your rights, duties and responsibilities. However, Section 1 is not a substitute for reading the laws (Section 2) and rules (Section 3).

All public agencies, contractors performing public work, and construction workers on public works construction should be aware of their rights and legal responsibilities. Failing to comply with the provisions of Chapter 39.12 RCW may subject contractors and/or public agencies to liability for all unpaid prevailing wages and penalties.

The Department of Labor & Industries (L&I) administers the prevailing wage law. The Office of the Attorney General provides legal counsel to L&I and prosecutes violators. The State Auditor's Office ascertains if a public agency's policies, procedures and practices meet the requirements of the law.

If you have questions that this booklet does not answer, please contact us for assistance. You will find telephone numbers, websites and email addresses at the back of this booklet.

Jim Christensen
Program Manager/Industrial Statistician

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Contractor/Employer Rights information is available at
www.Lni.wa.gov/TradesLicensing/PrevWage/EmployerResp

I

Plain Language Description

1. Introduction

- A. How to Use this Booklet:** The Plain Language Description chapter of this booklet is provided to help you understand the laws and regulations regarding prevailing wages. A brief explanation is provided here to ease your research into the laws and WAC rules. At the end of each section, the applicable Revised Code of Washington (RCW) and Washington Administrative Code (WAC) references are given so you can directly locate, read and understand the laws and regulations. Together, these references should help you understand your rights and responsibilities. Telephone numbers for contacting the Department of Labor & Industries (L&I) are provided at the back of this booklet, in case you have further questions. You may also email the L&I Prevailing Wage Program at pw1@lni.wa.gov to request further information.
- B. How NOT to Use this Booklet:** Do not rely on this plain language description without reading the laws and regulations. This booklet is not legal advice and is not a substitute for the laws and regulations of the state. The informal discussions below are meant to be helpful when read in conjunction with the laws and WAC rules. They are not meant to be a substitute for reading and understanding the laws. After reading the laws and regulations, please do not hesitate to contact the Prevailing Wage Program with any questions you may have.

2. The Prevailing Wages on Public Works Act

- A. The Law:** Enacted in 1945, the Washington State Public Works Act (Act), also known as the “prevailing wage law,” is a worker protection act. It requires that workers be paid prevailing wages when employed on public works projects, on public building service maintenance contracts, and on certain work involving public contracts to rent, lease or purchase private buildings.
RCW 39.04.010, RCW 39.04.260, RCW 39.12.010, RCW 39.12.020, RCW 39.12.030 and WAC 296-127-010.
- B. Purpose:** The Public Works Act is partly modeled after the federal Davis-Bacon Act, which was enacted to protect the employees of contractors performing public works construction from substandard earnings, and to preserve local wage standards. The employees, not contractors or employers, are the beneficiaries of the Act. The Act is remedial and should be liberally construed. In other words, L&I is directed to apply the law in ways that carry out the law’s intent which is to protect workers and preserve local wage standards.
- C. Application:** The Public Works Act regulates wages paid to workers, laborers, and mechanics performing public work. It does not apply to work that is clerical, executive or administrative in nature. For example, the Act does not apply to the work of a secretary, engineer or administrator, unless

such person is performing construction work, alteration work, repair work, etc. Prevailing wage application depends on the nature of the work that is performed, regardless of the worker's job title. Any doubts or questions regarding the applicability of the prevailing wage law should be directed to the Prevailing Wage Program.

RCW 39.12.020 and RCW 39.12.030

3. Public Work and Work Requiring Payment of Prevailing Wages

- A. Defined:** Public work means work, construction, alteration, repair or improvement that is performed at a cost to the state or any other public agency. This includes, but is not limited to, construction, reconstruction, maintenance, replacement or repair such as demolition, remodeling, renovation, road construction, building construction, ferry construction and utilities construction.

RCW 39.04.010, RCW 39.12.030 and WAC 296-127-010

- B. Public Building Service Maintenance Contracts:** Prevailing wages are also required on all public building service maintenance (janitorial) contracts.

RCW 39.12.020 and WAC 296-127-023

- C. Offsite Prefabrication:** The offsite fabrication of **non-standard** items specifically produced for a public works project is considered public work for which prevailing wages are required. Examples include, but are not limited to: fabrication of ducts for heating, ventilation, and air conditioning systems, certain concrete tunnel liners, and certain steel prefabrication. If you have any questions about whether prevailing wages apply to an item fabricated for a public work offsite, contact L&I for a determination which will be based on all relevant factors, including (1) whether the item is fabricated in an assembly/fabrication plant set up for, and dedicated primarily to, the public works project; (2) whether the item requires assembly, cutting, modification or other fabrication by the supplier; (3) whether the item is typically an inventory item which could reasonably be sold on the general market; and (4) whether the item, although generally defined as "standard," has unusual characteristics such as shape, type of material, strength requirements, or finish, etc., specifically for the public works project.

RCW 39.04.010 and WAC 296-127-010(5)(b)

- D. Maintenance:** Prevailing wages are also required to be paid to laborers, workers or mechanics who perform maintenance by contract.

RCW 39.04.010, RCW 39.12.020, RCW 39.12.030, WAC 296-127-010 and WAC 296-127-023

- E. Material Suppliers:** The production and delivery of sand, gravel, crushed rock, concrete, asphalt and other similar materials may require the payment

of prevailing wage rates when that work is executed under a public works contract depending on the specific nature of the work performed and its relationship to the project. Contact L&I for a specific determination.

RCW 39.12.010, RCW 39.12.020, RCW 39.12.030 and WAC 296-127-018

- F. Turnkey Projects (lessee/lessor relationships between public and private parties):** Prevailing wages must be paid for any work, construction, alteration, repair or improvement that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities.

RCW 39.04.260 and WAC 296-127-010(7)(a)(iii)

4. Prevailing Wage

- A. Defined:** Prevailing wage is the hourly wage, usual benefits and overtime, paid in the largest city in each county, to the majority of workers, laborers, and mechanics performing the same work. Prevailing wages are established by L&I for each trade and occupation employed in the performance of public work. The prevailing rate of wage is established separately for each county, and reflects local wage conditions.

RCW 39.12.010 and RCW 39.12.015

- B. Same Trade or Occupation:** Classifications or “scopes” of work are adopted as prevailing wage rules in chapter 296-127 WAC. To ensure payment of the correct wage rate, the work must be paid at the trade or occupation rate that applies to the type of work performed. Misclassification into a lower paid classification is a failure to pay the prevailing rate of wage. The Industrial Statistician determines wages and scopes of work. Scope of work descriptions are available online at www.Lni.wa.gov/TradesLicensing/PrevWage/WageRates/IsPrevWageJob.

RCW 39.12.020 and WAC 296-127-01301 to WAC 296-127-01396

- C. Survey Methodology:** The L&I Industrial Statistician determines all prevailing wage rates. Surveys are conducted in which contractors and labor unions are invited to submit wage and hour data to the Industrial Statistician. If the majority of workers in a trade or occupation in the largest city in a county are paid at the same wage rate for the same work, that wage becomes the prevailing wage for that work. If no single wage rate is paid to a majority of workers in a particular locality, an average wage is calculated and that wage becomes the prevailing wage.

RCW 39.12.015 and WAC 296-127-019

- D. Usual (Fringe) Benefits and Overtime:** The prevailing rate of wage also includes usual benefits. Usual benefits include employer payments for medical insurance, pensions, approved apprenticeship training programs,

and vacation and holiday pay. Deductions from worker paychecks are not usual benefits. Usual benefits are employer paid. Benefits that are required by law (industrial insurance, Social Security, etc.) do not qualify as usual benefits. Employers must pay a wage and usual benefits package that adds up to the prevailing rate of wage. If an employer does not provide usual fringe benefits, then the total prevailing wage rate must be paid as an hourly wage. Where applicable, special overtime and holiday rates are also established for each trade and occupation. Employer paid usual benefits cannot be applied to reduce the actual wage paid below the state minimum wage rate and the amount attributable to benefits must be calculated based on L&I approved methodology. A detailed policy on usual benefits can be found online at www.Lni.wa.gov/TradesLicensing/PrevWage/files/Policies/BenefitsCalculationPolicy.pdf.

Employers must comply with all posting and employee notification requirements provided by applicable federal and state laws, and must have, and make available to L&I upon request, copies of all documents concerning usual benefits. Since federal law requires employers to provide eligible employees with a Summary Plan Description (SPD) regarding most employer-paid benefits, typically, the SPD (together with any relevant Summary Material Modifications) and proof of deposits will generally document such employer retirement, pension, and profit-sharing plan payments.

RCW 39.12.010(3), WAC 296-127-014, and WAC 296-127-01410

- E. Eight-Hour Workday:** The Legislature has established an eight-hour workday for public works projects and provided for an exception where there is a properly executed agreement between the worker and employer for a 10-hour work day. Agreements for a 10-hour day must conform to the specific conditions set forth in the applicable rule. Basically, the 10-hour work day agreement must be voluntary, entered into individually with each worker, and signed and dated by the employer and the worker prior to work beginning. In any event, overtime rates must be paid for all hours worked in excess of 40 hours for the week.

RCW 49.28.010, RCW 49.28.040, RCW 49.28.050, RCW 49.28.060, RCW 49.28.065 and WAC 296-127-022

5. Intent and Affidavits

- A. Requirement:** Each and every individual contractor and subcontractor on a public works project must individually file a Statement of Intent to Pay Prevailing Wages (Intent) form, and an Affidavit of Wages Paid (Affidavit) form for each contract to perform work. These forms are filed with L&I and once they are approved they are submitted by the contractor or subcontractor to the agency administering the contract. There is no minimum dollar contract amount which triggers the filing of the forms. Intent and

Affidavit forms are required for every public works contract regardless of the size of the contract. For most projects the forms are available for completion online at www.Lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/GettingStarted.

RCW 39.12.040 and WAC 296-127-040, WAC 296-127-045 and WAC 296-127-050

- B. Intents:** The Intent form should be filed immediately after the contract is awarded and before work begins. The agency administering the contract cannot make any payments until contractors have submitted an Intent form that has been approved by the Industrial Statistician.

RCW 39.12.040, RCW 39.12.042, WAC 296-127-040 and WAC 296-127-050

- C. Affidavits:** The Affidavit form is not filed until after all the work is completed. The agency administering the contract may not release final retainage until each and every contractor and subcontractor has submitted an Affidavit form that has been certified by the Industrial Statistician.

RCW 39.12.040, RCW 39.12.042, WAC 296-127-045 and WAC 296-127-050

- D. Alternate Combined Forms for Small Works:** There are two different combined Intent and Affidavit forms for small or limited public works. One is for projects of \$2,500 or less, including tax and another is for projects under \$35,000, including tax.

The combined small works forms are used only in limited situations, subject to the following:

- The public agency (not the contractor) decides if an alternative process may be used.
- The public agency and the contractor are liable for unpaid wages as a condition of using alternate forms.
- Projects with more than one contractor cannot use combined forms (no subcontractors).
- Dividing or phasing of projects is prohibited – no units or phases are allowed as a means to avoid the form's maximum dollar limit.
- The contractor must sign the form certifying its accuracy.
- The public agency must approve and sign the forms.
- No payment to the contractor is allowed until the form is approved by the public agency.
- Failure to file is subject to a \$500 civil penalty.

On the under \$35,000 combined form, the total filing fees for both the Intent and Affidavit apply. On the \$2,500 or less combined form, the filing fees are waived.

RCW 39.04.155, RCW 39.12.040, WAC 296-127-040, WAC 296-127-045 and WAC 296-127-050

6. Rights of Workers

- A. Background:** The Public Works Act is a worker protection law where the worker, not the employer, is the beneficiary. It provides that minimum wage rates must be paid to workers on public works construction projects to protect workers from substandard earnings and to preserve local wage standards.
- B. Posting:** Intent forms listing the labor classifications and wages used on the public works project must be posted for worker inspection at the job site for projects over \$10,000. On road construction, sewer line, pipeline, transmission line, street or alley improvement projects, the employer may post this form at the nearest local office, gravel crushing, concrete or asphalt batch plant. In such situations, the employer must provide a copy of the Intent form to any worker who requests it, together with the address and telephone number of the L&I Industrial Statistician where a complaint or inquiry concerning prevailing wages may be made. In the event the Intent form has not been approved by L&I before work begins, the complete listing of prevailing wage rates for that county may be posted and distributed in lieu of the approved Intent form.

RCW 39.12.020

- C. Wage Statements:** Washington employment law requires that employers provide, with each employee's paycheck, an itemized statement showing time worked, rates of pay, gross wages and a list of all deductions. The employee should not have to ask for this. It must be provided with each paycheck.

WAC 296-126-040

- D. Other Records:** The employer is required to keep certain records in addition to the pay statement. Payroll records must be kept showing the name, address, Social Security number, trade or occupation, straight-time rate, hourly rate of usual benefits and overtime hours worked each day and week, including agreements to work up to 10-hour days, and the actual rate of wages paid. Upon receiving a written request from L&I, the awarding agency or an interested party, an employer must, within 10 days, submit Certified Project Payroll records to L&I and to the awarding agency.

RCW 39.12.010(4), WAC 296-127-320 and Certified Project Payroll Form

- E. Wage Claims/Complaints:** Any interested party, not just a worker, may file a complaint. This filing involves filling out a form and providing information showing work hours and rates of pay. Claims filed within 30 days from agency acceptance of a project must be investigated by L&I. In addition to filing a complaint or claim with L&I, a worker may have other remedies under the law.

RCW 39.12.010(4), RCW 39.12.065, WAC 296-127-130 and Worker Rights Complaint Form

7. Responsibilities of Awarding Agencies

- A. Contracts for Public Work:** Public agencies, in awarding a contract, must determine whether the contract involves “public work” and communicate that information to prospective contractors and subcontractors in bid specifications and contracts. The law does not allow public agencies to shift this burden upon the contractor or subcontractor. For example, it is insufficient to state, “Contractors shall comply with the prevailing wage law, if applicable.” Agencies should seek the advice of legal counsel regarding when a contract is for public work. Before acting on advice that a contract is not for public work, agencies should also contact the Prevailing Wage Program for a determination of the applicability of the statute.

RCW 39.04.010, RCW 39.12.030, RCW 39.12.040, RCW 39.12.042 and WAC 296-127-010

- B. Prevailing Wage Provisions:** Awarding agencies must state in bid specifications and contracts for public work that workers shall receive the prevailing rate of wage. The awarding agency must further provide a list of the applicable prevailing wage rates, and indicate if residential rates are permitted. Bid specifications may provide the required wage rate information by listing the applicable wage rates in the bid specification documents or by providing in the specifications the URL to L&I’s prevailing wage rates. If the awarding agency chooses to use the L&I URL alternative the specifications must also:

- Identify the exact wage publication date to use;
- State the county in which the public works project is located;
- Specify that a printed copy of the wage rates is available for viewing in the awarding agency office; and
- Explain that the awarding agency will provide a hard copy upon request

If an awarding agency uses this method, it must also retain a copy of the rates as part of the bid records.

RCW 39.12.030 and WAC 296-127-010(9).

- C. Dispute Resolution Provisions:** Awarding agencies must stipulate in public work contracts that any dispute in connection with the contract which the parties cannot resolve among themselves shall be referred to the director of L&I for arbitration, and that the director’s decision shall be final, conclusive and binding on all parties to the dispute.

RCW 39.12.060 and WAC 296-127-060

- D. Contractor Eligibility:** Agencies may only award public works contracts to responsible bidders qualified to be awarded a public works project. The criteria that must be met to qualify for responsible bidder status are

set forth in RCW 39.04.350. Except for contracts on highway projects that involve contractors who have been prequalified by the Department of Transportation, no agency may award a contract to any contractor or subcontractor who is not registered or licensed as required by Washington law. Additionally, no agency may award a contract to any contractor or subcontractor whose name appears on a debarred contractor list maintained by the L&I Industrial Statistician which is available at the L&I website: www.Lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors.

RCW 18.27, RCW 39.04.350, RCW 39.06.010, RCW 39.12.050, RCW 39.12.065, RCW 51.48.020(1), RCW 51.48.103, and WAC 296-127-310

- E. Public Building Service Maintenance Contracts:** Public building service maintenance (janitorial) contracts of more than one-year duration must include wage language requiring an update to the applicable prevailing wages each year after the first year of the contract. The awarding agency bears the cost of any increase in the cost of wages required by the wage update.

RCW 39.12.020 and WAC 296-127-023

- F. Disbursal of Public Funds:** Awarding agencies may not make any payments to any contractor or subcontractor who has not submitted an Intent form that has been approved by the Industrial Statistician. Awarding agencies may not release retainage until all contractors and all subcontractors have submitted Affidavit forms that have been certified by the Industrial Statistician, certificates to release retainage are received from the Department of Labor & Industries, and ensured all that all claims or liens are resolved (Please see Section 11: Retainage for additional information). The requirement to submit these forms should also be stated in the contract. A public agency shall pay only such vouchers which contain a certification that prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with that public agency. Any agency that pays a contractor who has not met these filing requirements is liable, along with the contractor, to all workers, laborers, or mechanics for the full amount of any wages due. In the event an agency has used the alternative process for contracts of \$2,500 or less or under the \$35,000 limited public works provisions and a valid wage claim is made in connection with the project, the awarding agency, as well as the contractor, is responsible for paying directly to the claimant any unpaid wages due.

RCW 39.12.030, RCW 39.12.040 and RCW 39.12.042

- G. Turnkey Projects (lessee/lessor relationships between public and private parties):** Prevailing wages must be paid for any work, construction, alteration, repair or improvement, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or

purchase at least 50 percent of the project by one or more state agencies or municipalities (RCW 39.04.260). It is the responsibility of the awarding agency to make an accurate determination as to whether the project falls within RCW 39.04.260 prior to entering into a lease relationship for space in a privately owned building. The determination is based on whether the awarding agency is causing the work to be performed and whether at least 50 percent of the leased space is going to be occupied by one or more public agencies. If RCW 39.04.260 applies, all work performed in conjunction with the project is covered, not just the tenant improvements, and the project is subject to all provisions of RCW 39.12. Should the awarding agency fail to comply with all the provisions of RCW 39.04.260 and RCW 39.12.040, the awarding agency can be held responsible for any unpaid prevailing wages.

RCW 39.04.260, RCW 39.12.040, RCW 39.12.042 and WAC 296-127-010(7)(a)(iii)

H. Contract Administration: Good practice requires taking additional steps to ensure compliance with the Public Works Act.

I. **Job Site Inspections:** Job site inspections should be performed on a routine or periodic basis to verify compliance. These inspections should include checking to see that a copy of the Intent is posted at the job site. Workers should be randomly interviewed to verify that prevailing wages are received. Apprentice workers should be asked to show their registration cards.

II. **Verify Contractor and Subcontractor Registration Status and Verify Workers' Compensation Premium Status:** Find out whether a contractor or subcontractor has an industrial insurance (workers' compensation) account with L&I and whether their premiums are up to date.

III. **Contractor References and Eligibility to Perform Public Work:** In addition to checking whether a contractor or subcontractor meets the above requirements, find out whether the contractor or contractor is debarred by L&I from bidding on public work contracts. L&I maintains a list of debarred contractors and subcontractors online: www.Lni.wa.gov/TradesLicensing/PrevWage/AwardingAgencies/DebarredContractors.

RCW 39.04.350, RCW 39.12.040

8. Responsibilities of Contractors and Subcontractors

A. Contractual Obligations: Contractors and subcontractors must abide by the terms of their contracts. On public works projects, the contract will state that prevailing wages must be paid to the workers and will include a listing of the prevailing wage rates that apply to that contract or will direct the contractor to L&I's URL for a list of applicable wage rates. Contractors and subcontractors are responsible for determining the correct worker classification(s) in order to ensure correct wages are paid.

RCW 39.04.010, RCW 39.12.010, RCW 39.12.030 and WAC 296-127-011

- B. Turnkey Projects (lessee/lessor relationships between public and private parties):** Prevailing wages must be paid for any work, construction, alteration, repair or improvement that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least 50 percent of the project by one or more state agencies or municipalities.

RCW 39.04.260 and WAC 296-127-010(7)(a)(iii)

- C. Intent and Affidavit Forms:** Each and every contractor and subcontractor on a public works project must individually submit Intent and Affidavit forms (approved and certified by L&I) to the agency administering the contract in order to receive payment. Intent forms should be filed prior to the start of work. Affidavits are filed after completion of the work. For most projects, filing is completed online at **www.Lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/GettingStarted**. A contractor may file on behalf of another contractor only under a limited set of circumstances that includes a direct contractual relationship between the filing contractor and the non-filing subcontractor, and a nonresponsive subcontractor that has gone out of business or failed to file as required. More information on filing on behalf of a nonresponsive subcontractor is available online: **www.Lni.wa.gov/TradesLicensing/PrevWage/files/Policies/FOBOPolicy.pdf**.

Approval and certification of Intent and Affidavit forms by the Industrial Statistician is based on the information provided on the forms. It signifies that the wage rates are listed correctly for the classifications indicated, but does not signify L&I approval of the classifications of labor used by the contractor.

RCW 39.04.155, RCW 39.12.040, WAC 296-127-040, WAC 296-127-045 and WAC 296-127-050

- D. Penalties – Failure to File/False Filing:** Following an L&I determination that a contractor or subcontractor filed a false statement or failed to file a statement or record required to be filed, the non-compliant contractor or subcontractor is subject to civil penalties and may be barred from bidding on public works contracts until the penalties have been paid. A contractor or subcontractor who files a false statement or fails to file a required statement or record for a second time within a five-year period will be barred from bidding on public works contracts for one year.

RCW 39.12.050, WAC 296-127-150 and WAC 296-127-310

- E. Progress Payments:** Voucher claims submitted for agency payment must include a certification that prevailing wages were paid by the contractor in accordance with the prefilled statement or statements of intent to pay prevailing wages on file.

RCW 39.12.040(1)(b)

- F. Labor Classifications:** All work performed under a public works contract must be classified into one or more of the many labor classifications for which prevailing wage rates have been established so that the appropriate wage can be applied. For example, workers installing sheet metal ducts are classified as Sheet Metal Workers, and receive the prevailing wage rate for that occupation. Contractors and subcontractors are responsible for ensuring that the proper classifications of labor are reported, and should take great care, since this is where many mistakes are made. Scope of work descriptions are available as a guide in determining which labor classification is appropriate. Any doubts or unresolved questions regarding the appropriate classifications of labor must be directed to the Prevailing Wage Program.

RCW 39.12.010, RCW 39.12.015, RCW 39.12.020, RCW 39.12.060, RCW 39.12.065, WAC 296-127-013, WAC 296-127-0130 through 01396, WAC 296-127-019 and WAC 296-127-060

- G. Posting:** An approved copy of the Intent form for each contractor and subcontractor must be posted at the job site prior to the commencement of work for contracts in excess of \$10,000. If the Intent form is in the process of being approved by the Industrial Statistician, the complete listing of the prevailing wage rates for the county where the job site is located may be posted until the approved form is received. Failure to meet these posting requirements is a violation of Chapter 39.12 RCW.

RCW 39.12.020

- H. Payroll Records:** Contractors and subcontractors must keep accurate payroll records for three years following the date of acceptance of the project by the awarding agency. Payroll records must show the name, address, Social Security number, trade or occupation, straight-time rate, hourly rate of usual benefits and overtime hours worked each day and week, including agreements to work up to 10-hour days, and the actual rate of wages paid. Upon receiving a written request from L&I, the awarding agency or an interested party, a contractor or subcontractor must, within ten days, submit Certified Project Payroll records to L&I and to the awarding agency.

RCW 39.12.010(4) and WAC 296-127-320

- I. Usual (Fringe) Benefits:** The prevailing rate of wage also includes usual benefits. Usual benefits include medical insurance, pensions, approved apprenticeship training programs, and vacation and holiday pay. Deductions from worker paychecks are not usual benefits. Usual benefits are employer paid. Benefits that are required by law (industrial insurance, Social Security, etc.) do not qualify as usual benefits. Employers must pay a wage and usual benefits package that adds up to the prevailing rate of wage. If an employer does not provide usual benefits, then the total prevailing wage rate must be paid as an hourly wage. Special overtime and holiday rates may also

be established for each trade and occupation. Contractors and employers must have and make available to L&I upon request, copies of all documents concerning usual benefits. Since employers are required by federal law to provide eligible employees with a Summary Plan Description (SPD) regarding certain pension plan benefits, typically the SPD (together with any pertinent Summary Material Modifications) and proof of deposits made will document payments for those benefits. In any event, employer-paid usual benefits cannot be applied so as to reduce the actual wage paid below the state minimum wage, and the amount attributable to benefits must be calculated consistent with L&I methodology. A detailed policy on usual benefits can be found online at www.lni.wa.gov/TradesLicensing/PrevWage/files/Policies/BenefitsCalculationPolicy.pdf.

RCW 39.12.010, WAC 296-127-014 and WAC 296-127-01410

9. Bids and Contracts

- A. Requirements:** All bid specifications and contracts for public work and for public building service maintenance contracts must include certain provisions and information. They must state that prevailing wage rates shall be paid, and they must include a list of the applicable prevailing wage rates, and indicate if residential rates are permitted. Bid specifications may provide the required wage rate information by listing the applicable wage rates in the bid specification documents or by providing in the specifications the URL to L&I's prevailing wage rates. If the awarding agency chooses to use the L&I URL alternative the specifications must also:

- Identify the exact applicable wage publication date to use;
- State the county in which the public works project is located;
- Specify that a copy of the wage rates is available for viewing in the awarding agency office; and
- Explain that the awarding agency will provide a hard copy upon request

If this process is followed, the awarding agency must also retain a copy of the rates as part of the bid records. These requirements also apply to certain agreements to rent, lease, or purchase a facility from a private owner (turnkey projects) where the agreement calls for construction or alteration work to be performed.

RCW 39.04.260, RCW 39.12.020, RCW 39.12.030 and WAC 296-127-023

- B. Prohibitions On Bidding:** Failure to pay required prevailing wage rates, failure to file required reports, and certain other conduct may prohibit a contractor or subcontractor from bidding on a project.

RCW 18.27, RCW 39.06.010, RCW 39.12.050, RCW 39.12.055, RCW 39.12.065, RCW 51.48.020(1) and RCW 51.48.103

C. Responsible Bidders: Agencies may only award public works contracts to responsible bidders qualified to be awarded a public works project. The criteria that must be met to qualify for responsible bidder status are set forth in RCW 39.04.350.

D. Timing: The prevailing wage rates in effect on the bid due date are the prevailing wage rates that apply to that construction project, no matter how long it lasts, unless the contract is awarded more than six months after the bids were due. For those contracts where the award was delayed more than six months, the prevailing wage rates in effect on the date of the award shall apply for the duration of the contract.

WAC 296-127-011

E. Small and Limited Works Projects: Purchase orders awarded under small or limited works contracts require payment of prevailing wage rates and filing of Intent and Affidavit forms.

RCW 39.04.040, RCW 39.04.155 and WAC 296-127-050

F. Threshold Amount: There is no minimum dollar contract amount for public works or prevailing wage. All contracts between a public agency and a private contractor or subcontractor to perform work at the cost of the public agency are public works contracts and require the payment of prevailing wages.

RCW 39.04.010, RCW 39.12.010, RWC 39.12.020 and WAC 296-127-010

G. Disputes: All public works contracts are required to include a provision stating that the Director of L&I shall arbitrate all disputes of the prevailing rate of wage.

RCW 39.12.060 and WAC 296-127-060

H. Joint State-Federal Projects: For projects where both the state prevailing wage law and the federal Davis-Bacon and related acts apply, contractors and subcontractors must pay the higher of the state or the federal wage rates, on a classification-by-classification basis. This requirement should also be stated in the bid specifications and the contracts.

WAC 296-127-025

10.Payment of Reduced Wage Rates

There are four circumstances in which a wage that is less than the journey-level prevailing wage rate may be paid.

A. Apprentices: Apprentices are defined as those workers for whom an apprenticeship agreement has been registered and approved by the state apprenticeship council. Under this law, any “helper” or other type of

assistant who is not registered with the Washington State Apprenticeship and Training Council (WSATC) is to be considered a fully qualified journey-level worker, and must be paid the full journey-level wage. Workers registered with the WSATC are entitled to the prevailing wage rates for an apprentice of that trade.

RCW 39.12.021 and WAC 296-127-021

- B. Vocationally Handicapped:** Workers whose earning capacity is impaired by physical or mental deficiency or injury may be employed upon public works for reduced wages under special certificates issued by L&I. The certificate lists the percent of journey-level wage that may be paid to the worker on public works projects. These certificates are filed by nonprofit vocational rehabilitation programs and may be obtained by contacting the Prevailing Wage Program.

RCW 39.12.022 and WAC 296-127-400 through 460

- C. Sole Proprietors, Partners, and Officer/Owners:** Sole owners of their own businesses who perform the actual work themselves on public works projects are not required to pay themselves the prevailing wage rates. Partners in a partnership who own at least 30 percent of a company are likewise not required to pay themselves prevailing wage rates. The president, vice president and treasurer of a corporation are not required to pay themselves prevailing wage, as long as each owns at least 30 percent of the corporation. These companies are not exempt from the remaining requirements of the statute. Specifically, they are still responsible for filing Intent and Affidavit forms. Any worker performing actual work on the project who owns less than 30 percent of the company is not exempt and must be paid the prevailing wage rate.

WAC 296-127-026

- D. Public Employees:** Workers regularly employed by the state or any political subdivision created by its laws are exempt from the requirements of the prevailing wage law.

RCW 39.12.020 and WAC 296-127-026

11.Retainage

- A. Requirement:** Public agencies must withhold 5% from the prime contractor to ensure all workers, suppliers, and taxes are paid appropriately for the project. The retained amount may be in the form of cash or bond. Projects funded in whole or in part by federal transportation funds must rely on the full contract bond to ensure all workers, suppliers, and taxes are paid appropriately for the project.

- B. Certificate of Release:** Once the work on the project has been completed and accepted, public agencies must notify the Department of Revenue, the Employment Security Department, and the Department of Labor & Industries. The Notice of Completion of Public Works Contract form must be submitted to all three state agencies for review. Each agency will verify that all taxes are paid appropriately for the project. Liens may be placed against the retainage for any taxes due and owing to the three agencies on the project. Once all taxes have been paid, each state agency will issue a separate Certificate of Release letter to the public agency and prime contractor that releases their hold on the retained funds.
- C. Final Payment:** In order to release retainage and make final payment to the prime contractor, the public entity must first receive certificates to release retainage from the Department of Revenue, the Employment Security Department, and the Department of Labor & Industries. In addition, approved Affidavit forms are required from all contractors on the project and all claims or liens must be resolved before retainage can be released. Approved Intent & Affidavit forms can be viewed here: <https://fortress.wa.gov/lni/wagelookup/searchforms.aspx>.

Website: www.Lni.wa.gov/RetainageRelease

RCW 60.28.011, RCW 60.28.021, RCW 60.28.040

II Selected Laws (Revised Code of Washington)

NOTICE

This document contains sections of the Revised Code of Washington (laws) that are current as of the date shown on the front cover. Changes to laws may occur in legislative sessions. Please research the most current language of the laws, which is available at **search.leg.wa.gov**. You may also contact the Prevailing Wage Program to obtain the most current laws.

Contact information is available at the back of this booklet.

Prevailing Wage Laws on Public Works

- 39.04.010 Definitions.
- 39.04.155 Small works roster contract procedures — Limited public works process — Definition
- 39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state — Must comply with prevailing wage law.
- 39.04.350 Bidder responsibility criteria — Supplemental criteria.
- 39.04.370 Contract requirements — Off-site prefabricated items — Submission of information.
- 39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.
- 39.06.020 Verification of subcontractor responsibility criteria.
- 39.12.010 Definitions.
- 39.12.015 Industrial statistician to make determinations of prevailing rate.
- 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts — Posting of statement of intent — Exception
- 39.12.021 Prevailing rate to be paid on public works — Apprentice workers.
- 39.12.022 Vocationally handicapped — Exemption from RCW 39.12.020 — Procedure.
- 39.12.026 Surveys — Applicability by county.
- 39.12.030 Contract specifications must state minimum hourly rate — Stipulation for payment.
- 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.
- 39.12.042 Compliance with RCW 39.12.040 — Liability of public agencies to workers, laborers, or mechanics.
- 39.12.050 False statement or failure to file — Penalty — Unpaid wages lien against bond and retainage — Prohibitions on bidding on future contracts — Hearing.
- 39.12.055 Prohibitions on bidding on future contracts.
- 39.12.060 Director of labor and industries to arbitrate disputes.
- 39.12.065 Investigation of complaints — Hearing — Remedies — Penalties.
- 39.12.070 Fees authorized for approvals, certifications, and arbitrations.
- 39.12.080 Public works administration account.
- 39.12.100 Independent contractors — Criteria.
- 39.12.110 Failure to provide or allow inspection of records.
- 39.12.900 Severability — 1945 c 63.
- 49.28.010 Eight hour day, 1899 act — Public works contracts — Emergency overtime — Penalty.
- 49.28.040 Eight hour day, 1903 act — Policy enunciated.
- 49.28.050 Eight hour day, 1903 act — Contracts, cancellation of, for violations.
- 49.28.060 Eight hour day, 1903 act — Stipulation in contracts — Duty of officers.
- 49.28.065 Public works employees — Agreements to work ten hour day.
- 60.28.011 Retained percentage — Public transportation projects — Labor and material lien created — Bond in lieu of retained funds — Termination before completion — Chapter deemed exclusive — Release of ferry contract payments — Projects of farmers home administration — General contractor/construction manager procedure — Definitions.
- 60.28.021 Excess over lien claims paid to contractor.

60.28.040 Tax liens — Priority of liens.

Notes: Enforcement of wage claims: RCW 49.48.040.

Hours of labor on public works: Chapter 49.28 RCW.

Workers' compensation applicable to public works contracts: RCW 51.12.050, 51.12.070.

RCW 39.04.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.

[2008 c 130 § 16; 2007 c 133 § 1; 2000 c 138 § 102; 1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

Notes: Purpose — Part headings not law — 2000 c 138: See notes following RCW 39.04.155.

Referendum — Other legislation limited — Legislators' personal intent not indicated — Reimbursements for election — Voters' pamphlet, election requirements — 1997 c 220: See RCW 36.102.800 through 36.102.803.

Severability — 1986 c 282: See RCW 82.18.900.

Municipalities — Energy audits and efficiency: RCW 43.19.691.

RCW 39.04.155 Small works roster contract procedures — Limited public works process — Definition.

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government

that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the

contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) (a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, “state agency” means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

[2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

Notes: *Reviser’s note: The “department of general administration” was renamed the “department of enterprise services” by 2011 1st sp.s. c 43 § 107.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—2000 c 138: “The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property.” [2000 c 138 § 1.]

Part headings not law—2000 c 138: “Part headings used in this act are not any part of the law.” [2000 c 138 § 302.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Competitive bids—Contract procedure: RCW 36.32.250.

RCW 39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law.

Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW.

[1993 c 110 § 1.]

Notes: Application -- 1993 c 110: “Section 1 of this act shall not apply to any project for which a call for competitive bids was made before July 25, 1993.” [1993 c 110 § 2.]

RCW 39.04.350 Bidder responsibility criteria—Supplemental criteria.

(1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3);

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation; and

(f) Until December 31, 2013, not have violated RCW 39.04.370 more than one time as determined by the department of labor and industries.

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available information related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site.

[2010 c 276 § 2; 2009 c 197 § 2; 2007 c 133 § 2.]

Notes: Rules--Implementation -- 2009 c 197: See note following RCW 39.04.320.

RCW 39.04.370 Contract requirements — Off-site prefabricated items — Submission of information.

(1) For any public work estimated to cost over one million dollars, the contract must contain a provision requiring the submission of certain information about off-site, prefabricated, nonstandard, project specific items produced under the terms of the contract and produced outside Washington. The information must be submitted to the department of labor and industries under subsection (2) of this section. The information that must be provided is:

- (a) The estimated cost of the public works project;
- (b) The name of the awarding agency and the title of the public works project;
- (c) The contract value of the off-site, prefabricated, nonstandard, project specific items produced outside Washington, including labor and materials; and
- (d) The name, address, and federal employer identification number of the contractor that produced the off-site, prefabricated, nonstandard, project specific items.

(2)(a) The required information under this section must be submitted by the contractor or subcontractor as a part of the affidavit of wages paid form filed with the department of labor and industries under RCW 39.12.040. This information is only required to be submitted by the contractor or subcontractor who directly contracted for the off-site, prefabricated, nonstandard, project specific items produced outside Washington.

(b) The department of labor and industries shall include requests for the information about off-site, prefabricated, nonstandard, project specific items produced outside Washington on the affidavit of wages paid form required under RCW 39.12.040.

(c) The department of general administration shall develop standard contract language to meet the requirements of subsection (1) of this section and make the language available on its web site.

(d) Failure to submit the information required in subsection (1) of this section as part of the affidavit of wages paid form does not constitute a violation of RCW 39.12.050.

(3) For the purposes of this section, “off-site, prefabricated, nonstandard, project specific items” means products or items that are: (a) Made primarily of architectural or structural precast concrete, fabricated steel, pipe and pipe systems, or sheet metal and sheet metal duct work; (b) produced specifically for the public work and not considered to be regularly available shelf items; (c) produced or manufactured by labor expended to assemble or modify standard items; and (d) produced at an off-site location.

(4) The department of labor and industries shall transmit information collected under this section to the capital projects advisory review board created in RCW 39.10.220 for review.

(5) This section applies to contracts entered into between September 1, 2010, and December 31, 2013.

(6) This section does not apply to department of transportation public works projects.

(7) This section does not apply to local transportation public works projects.

[2010 c 276 § 1.]

Notes: *Reviser’s note: The “department of general administration” was renamed the “department of enterprise services” by 2011 1st sp.s. c 43 § 107.

RCW 39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited. No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or * 82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract.

[1997 c 54 § 1; 1984 c 7 § 43; 1967 c 70 § 3.]

Notes: *Reviser's note: RCW 82.32.070 was amended by 1999 c 358 § 14, changing subsection (1)(b) to subsection (2).

Severability—1984 c 7: See note following RCW 47.01.141.

Construction building permits—Cities, towns or counties prohibited from issuing without verification of registration: RCW 18.27.110.

RCW 39.06.020 Verification of subcontractor responsibility criteria.

A public works contractor must verify responsibility criteria for each first tier subcontractor, and a subcontractor of any tier that hires other subcontractors must verify responsibility criteria for each of its subcontractors. Verification shall include that each subcontractor, at the time of subcontract execution, meets the responsibility criteria listed in RCW 39.04.350(1) and possesses an electrical contractor license, if required by chapter 19.28 RCW, or an elevator contractor license, if required by chapter 70.87 RCW. This verification requirement, as well as the responsibility criteria, must be included in every public works contract and subcontract of every tier.

[2007 c 133 § 3.]

RCW 39.12.010 Definitions.

(1) The "prevailing rate of wage," for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee.

[1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

Notes: Severability—1985 c 15: See note following RCW 39.12.065.

RCW 39.12.015 Industrial statistician to make determinations of prevailing rate.

All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries.

[1965 ex.s. c 133 § 2.]

RCW 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent—Exception.

The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: PROVIDED, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed by the state, or any county, municipality, or political subdivision created by its laws.

[2007 c 169 § 1; 1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

RCW 39.12.021 Prevailing rate to be paid on public works — Apprentice workers.

Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers.

[1989 c 12 § 8; 1963 c 93 § 1.]

RCW 39.12.022 Vocationally handicapped — Exemption from RCW 39.12.020 — Procedure.

The director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the prevailing rate applicable under RCW 39.12.020 and for such period as shall be fixed in such certificates.

[1972 ex.s. c 91 § 1.]

RCW 39.12.026 Surveys — Applicability by county.

(1) In establishing the prevailing rate of wage under RCW 39.12.010, 39.12.015, and 39.12.020, all data collected by the department may be used only in the county for which the work was performed.

(2) This section applies only to prevailing wage surveys initiated on or after August 1, 2003.

[2003 c 363 § 206.]

Notes: Findings — Intent — 2003 c 363 §§ 201-206: See note following RCW 49.04.041.

Part headings not law — Severability — 2003 c 363: See notes following RCW 47.28.241.

RCW 39.12.030 Contract specifications must state minimum hourly rate — Stipulation for payment.

(1) The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or

political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract.

[2009 c 62 § 1; 1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

RCW 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid — Alternative procedure.

(1)(a) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it is the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a “Statement of Intent to Pay Prevailing Wages”. For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages must include:

(i) The contractor’s registration certificate number; and

(ii) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

(b) Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate must state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it is the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an affidavit of wages paid before the funds retained according to the provisions of RCW 60.28.011 are released to the contractor. On a public works project where no retainage is withheld pursuant to RCW 60.28.011(1)(b), the affidavit of wages paid must be submitted to the state, county, municipality, or other public body charged with the duty of disbursing or authorizing disbursement of public funds prior to final acceptance of the public works project. If a subcontractor performing work on a public works project fails to submit an affidavit of wages paid form, the contractor or subcontractor with whom the subcontractor had a contractual relationship for the project may file the forms on behalf of the nonresponsive subcontractor. Affidavit forms may only be filed on behalf of a nonresponsive subcontractor who has ceased operations or failed to file as required by this section. The contractor filing the affidavit must accept responsibility for payment of prevailing wages unpaid by the subcontractor on the project pursuant to RCW 39.12.020 and RCW 39.12.065. Intentionally filing a false affidavit on behalf of a subcontractor subjects the filer to the same penalties as are provided in RCW 39.12.050. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to the disbursing officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less and for projects where the limited public works process under RCW 39.04.155(3) is followed:

(a) An awarding agency may authorize the contractor or subcontractor to submit the

statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency must retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency must require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.011. Within thirty days of receipt of the affidavit of wages paid, the awarding agency must submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid must be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in this subsection (2), the awarding agency must pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section may be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose of circumventing the procedures required by subsection (1) of this section.

[2013 c 113 § 5; 2012 c 129 § 1; 2009 c 219 § 2; 2007 c 210 § 4; 1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

RCW 39.12.042 Compliance with RCW 39.12.040 — Liability of public agencies to workers, laborers, or mechanics.

If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020.

[1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

Notes: Effective date — 1993 c 404: See note following RCW 39.12.070.

RCW 39.12.050 False statement or failure to file — Penalty — Unpaid wages lien against bond and retainage — Prohibitions on bidding on future contracts — Hearing.

(1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a

bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. Civil penalties shall be deposited in the public works administration account. To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal. The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW.

[2009 c 219 § 3; 2001 c 219 § 1; 1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

Notes: Severability—1985 c 15: See note following RCW 39.12.065.

RCW 39.12.055 Prohibitions on bidding on future contracts.

A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five-year period:

- (1) Violated RCW 51.48.020(1) or 51.48.103;
- (2) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or
- (3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW.

[2009 c 197 § 3; 2008 c 120 § 3.]

Notes: Rules—Implementation—2009 c 197: See note following RCW 39.04.320.
Conflict with federal requirements—Severability—2008 c 120: See notes following RCW 18.27.030.

RCW 39.12.060 Director of labor and industries to arbitrate disputes.

Such contract shall contain a further provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute.

[1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

Notes: Arbitration of disputes: Chapter 49.08 RCW.
Uniform arbitration act: Chapter 7.04A RCW.

RCW 39.12.065 Investigation of complaints — Hearing — Remedies — Penalties.

(1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

- (a) The retainage or bond in lieu of retainage as provided in RCW 60.28.011;
- (b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.041;
- (c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and
- (d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall

not be allowed to bid on any public works contract for two years. Civil penalties shall be deposited in the public works administration account. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.041, 39.08.010, and 60.28.011.

[2009 c 219 § 4; 2001 c 219 § 2; 1994 c 88 § 1; 1985 c 15 § 2.]

Notes: Severability—1985 c 15: “If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.” [1985 c 15 § 4.]

RCW 39.12.070 Fees authorized for approvals, certifications, and arbitrations.

(1) The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. Except as provided in subsection (3) of this section, the fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary, request the attorney general to take legal action to collect delinquent fees.

(2) The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be forty dollars.

(3) If, at the time an individual or entity files an affidavit of wages paid, the individual or entity is exempt from the requirement to pay the prevailing rate of wage under RCW 39.12.020, the department of labor and industries may not charge a fee to certify the affidavit of wages paid.

[2014 c 148 § 1; 2008 c 285 § 2; 2006 c 230 § 1; 1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

Notes: Effective date — 2008 c 285 § 2: “Section 2 of this act takes effect July 1, 2008.”

[2008 c 285 § 3.]

Intent — Captions not law — 2008 c 285: See notes following RCW 43.22.434.

Effective date — 2006 c 230: “This act takes effect July 1, 2007.” [2006 c 230 § 3.]

Effective date — 1993 c 404: “This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993.” [1993 c 404 § 4.]

RCW 39.12.080 Public works administration account.

The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees or civil penalties collected under RCW 39.12.050, 39.12.065, and 39.12.070. Appropriations from the account may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW.

[2006 c 230 § 2; 2001 c 219 § 3; 1993 c 404 § 2.]

Notes: Effective date — 2006 c 230: See note following RCW 39.12.070.

Effective date — 1993 c 404: See note following RCW 39.12.070.

RCW 39.12.100 Independent contractors — Criteria.

For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has

registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

[2009 c 63 § 1.]

RCW 39.12.110 Failure to provide or allow inspection of records.

Any employer, contractor, or subcontractor who fails to provide requested records, or fails to allow adequate inspection of records in an investigation by the department of labor and industries under this chapter within sixty calendar days of service of the department's request may not use the records in any proceeding under this chapter to challenge the correctness of any determination by the department that wages are owed, that a record or statement is false, or that the employer, contractor, or subcontractor has failed to file a record or statement.

[2011 c 92 § 1.]

RCW 39.12.900 Severability — 1945 c 63.

If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional.

[1945 c 63 § 7.]

RCW 49.28.010 Eight hour day, 1899 act — Public works contracts — Emergency overtime — Penalty.

(1) Hereafter eight hours in any calendar day shall constitute a day's work on any work done for the state or any county or municipality within the state, subject to conditions hereinafter provided

(2) All work done by contract or subcontract on any building or improvements or works on roads, bridges, streets, alleys, or buildings for the state or any county or municipality within the state, shall be done under the provisions of this section. In cases of extraordinary emergency such as danger to life or property, the hours for work may be extended, but in such case the rate of pay for time employed in excess of eight hours of each calendar day, shall be one and one-half times the rate of pay allowed for the same amount of time during eight hours' service. And for this purpose this section is made a part of all contracts, subcontracts, or agreements for work done for the state or any county or municipality within the state.

(3) Any contractor, subcontractor, or agent of contractor or subcontractor, foreman, or employer who violates this section is guilty of a misdemeanor and shall be fined a sum not less than twenty-five dollars nor more than two hundred dollars, or imprisoned in the county jail for a period of not less than ten days nor more than ninety days, or both such fine and imprisonment, at the discretion of the court.

[2003 c 53 § 274; 1899 c 101 § 1; RRS § 7642.]

Notes: Intent — Effective date — 2003 c 53: See notes following RCW 2.48.180.

RCW 49.28.040 Eight hour day, 1903 act— Policy enunciated.

That it is a part of the public policy of the state of Washington that all work “by contract or day labor done” for it, or any political subdivision created by its laws, shall be performed in work days of not more than eight hours each, except in cases of extraordinary emergency. No case of extraordinary emergency shall be construed to exist in any case where other labor can be found to take the place of labor which has already been employed for eight hours in any calendar day.

[1903 c 44 § 1; RRS § 7645.]

RCW 49.28.050 Eight hour day, 1903 act— Contracts, cancellation of, for violations.

All contracts for work for the state of Washington, or any political subdivision created by its laws, shall provide that they may be canceled by the officers or agents authorized to contract for or supervise the execution of such work, in case such work is not performed in accordance with the policy of the state relating to such work.

[1903 c 44 § 2; RRS § 7646.]

RCW 49.28.060 Eight hour day, 1903 act— Stipulation in contracts— Duty of officers.

It is made the duty of all officers or agents authorized to contract for work to be done in behalf of the state of Washington, or any political subdivision created under its laws, to stipulate in all contracts as provided for in RCW 49.28.040 through 49.28.060, and all such officers and agents, and all officers and agents entrusted with the supervision of work performed under such contracts, are authorized, and it is made their duty, to declare any contract canceled, the execution of which is not in accordance with the public policy of this state as herein declared.

[1903 c 44 § 3; RRS § 7647.]

RCW 49.28.065 Public works employees— Agreements to work ten hour day.

Notwithstanding the provisions of RCW 49.28.010 through 49.28.060, a contractor or subcontractor in any public works contract subject to those provisions may enter into an agreement with his or her employees in which the employees work up to ten hours in a calendar day. No such agreement may provide that the employees work ten-hour days for more than four calendar days a week. Any such agreement is subject to approval by the employees. The overtime provisions of *RCW 49.28.020 shall not apply to the hours, up to forty hours per week, worked pursuant to agreements entered into under this section.

[1988 c 121 § 1.]

Notes: *Reviser’s note: RCW 49.28.020 was repealed by 2003 c 53 § 421, effective July 1, 2003.

RCW 60.28.011 Retained percentage— Public transportation projects— Labor and material lien created— Bond in lieu of retained funds— Termination before completion— Chapter deemed exclusive— Release of ferry contract payments— Projects of farmers home administration— General contractor/construction manager procedure— Definitions.

(1)(a) Except as provided in (b) of this subsection, public improvement contracts must provide, and public bodies must reserve, a contract retainage not to exceed five percent of the moneys earned by the contractor as a trust fund for the protection and payment of: (i) The claims of any person arising under the contract; and (ii) the state with respect

to taxes, increases, and penalties imposed pursuant to Titles 50, 51, and 82 RCW which may be due from such contractor.

(b) Public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of: (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Titles 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at a minimum, all claims filed in compliance with chapter 39.08 RCW are resolved.

(2) Every person performing labor or furnishing supplies toward the completion of a public improvement contract has a lien upon moneys reserved by a public body under the provisions of a public improvement contract. However, the notice of the lien of the claimant must be given within forty-five days of completion of the contract work, and in the manner provided in RCW 39.08.030.

(3) The contractor at any time may request the contract retainage be reduced to one hundred percent of the value of the work remaining on the project.

(a) After completion of all contract work other than landscaping, the contractor may request that the public body release and pay in full the amounts retained during the performance of the contract, and sixty days thereafter the public body must release and pay in full the amounts retained (other than continuing retention of five percent of the moneys earned for landscaping) subject to the provisions of chapters 39.12 and 60.28 RCW.

(b) Sixty days after completion of all contract work the public body must release and pay in full the amounts retained during the performance of the contract subject to the provisions of chapters 39.12 and 60.28 RCW.

(4) The moneys reserved by a public body under the provisions of a public improvement contract, at the option of the contractor, must be:

(a) Retained in a fund by the public body;

(b) Deposited by the public body in an interest bearing account in a bank, mutual savings bank, or savings and loan association. Interest on moneys reserved by a public body under the provision of a public improvement contract must be paid to the contractor;

(c) Placed in escrow with a bank or trust company by the public body. When the moneys reserved are placed in escrow, the public body must issue a check representing the sum of the moneys reserved payable to the bank or trust company and the contractor jointly. This check must be converted into bonds and securities chosen by the contractor and approved by the public body and the bonds and securities must be held in escrow. Interest on the bonds and securities must be paid to the contractor as the interest accrues.

(5) The contractor or subcontractor may withhold payment of not more than five percent from the moneys earned by any subcontractor or sub-subcontractor or supplier contracted with by the contractor to provide labor, materials, or equipment to the public project. Whenever the contractor or subcontractor reserves funds earned by a subcontractor or sub-subcontractor or supplier, the contractor or subcontractor must pay interest to the subcontractor or sub-subcontractor or supplier at a rate equal to that received by the contractor or subcontractor from reserved funds.

(6) A contractor may submit a bond for all or any portion of the contract retainage in a form acceptable to the public body and from a bonding company meeting standards

established by the public body. The public body must accept a bond meeting these requirements unless the public body can demonstrate good cause for refusing to accept it. This bond and any proceeds therefrom are subject to all claims and liens and in the same manner and priority as set forth for retained percentages in this chapter. The public body must release the bonded portion of the retained funds to the contractor within thirty days of accepting the bond from the contractor. Whenever a public body accepts a bond in lieu of retained funds from a contractor, the contractor must accept like bonds from any subcontractors or suppliers from which the contractor has retained funds. The contractor must then release the funds retained from the subcontractor or supplier to the subcontractor or supplier within thirty days of accepting the bond from the subcontractor or supplier.

(7) If the public body administering a contract, after a substantial portion of the work has been completed, finds that an unreasonable delay will occur in the completion of the remaining portion of the contract for any reason not the result of a breach thereof, it may, if the contractor agrees, delete from the contract the remaining work and accept as final the improvement at the stage of completion then attained and make payment in proportion to the amount of the work accomplished and in this case any amounts retained and accumulated under this section must be held for a period of sixty days following the completion. In the event that the work is terminated before final completion as provided in this section, the public body may thereafter enter into a new contract with the same contractor to perform the remaining work or improvement for an amount equal to or less than the cost of the remaining work as was provided for in the original contract without advertisement or bid. The provisions of this chapter are exclusive and supersede all provisions and regulations in conflict herewith.

(8) Whenever the department of transportation has contracted for the construction of two or more ferry vessels, sixty days after completion of all contract work on each ferry vessel, the department must release and pay in full the amounts retained in connection with the construction of the vessel subject to the provisions of RCW 60.28.021 and chapter 39.12 RCW. However, the department of transportation may at its discretion condition the release of funds retained in connection with the completed ferry upon the contractor delivering a good and sufficient bond with two or more sureties, or with a surety company, in the amount of the retained funds to be released to the contractor, conditioned that no taxes may be certified or claims filed for work on the ferry after a period of sixty days following completion of the ferry; and if taxes are certified or claims filed, recovery may be had on the bond by the department of revenue, the employment security department, the department of labor and industries, and the material suppliers and laborers filing claims.

(9) Except as provided in subsection (1) of this section, reservation by a public body for any purpose from the moneys earned by a contractor by fulfilling its responsibilities under public improvement contracts is prohibited.

(10) Contracts on projects funded in whole or in part by farmers home administration and subject to farmers home administration regulations are not subject to subsections (1) through (9) of this section.

(11) This subsection applies only to a public body that has contracted for the construction of a facility using the general contractor/construction manager procedure, as defined under RCW 39.10.210. If the work performed by a subcontractor on the project has been completed within the first half of the time provided in the general contractor/construction manager contract for completing the work, the public body may

accept the completion of the subcontract. The public body must give public notice of this acceptance. After a forty-five day period for giving notice of liens, and compliance with the retainage release procedures in RCW 60.28.021, the public body may release that portion of the retained funds associated with the subcontract. Claims against the retained funds after the forty-five day period are not valid.

(12) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) “Contract retainage” means an amount reserved by a public body from the moneys earned by a person under a public improvement contract.

(b) “Person” means a person or persons, mechanic, subcontractor, or material person who performs labor or provides materials for a public improvement contract, and any other person who supplies the person with provisions or supplies for the carrying on of a public improvement contract.

(c) “Public body” means the state, or a county, city, town, district, board, or other public body.

(d) “Public improvement contract” means a contract for public improvements or work, other than for professional services, or a work order as defined in RCW 39.10.210.

[2013 c 113 § 1; 2011 c 231 § 2. Prior: 2009 c 432 § 5; 2009 c 219 § 6; prior: 2007 c 494 § 504; 2007 c 218 § 92; 2003 c 301 § 7; 2000 c 185 § 1; 1994 c 101 § 1; 1992 c 223 § 2.]

Notes: Intent—Recognition—2011 c 231: “The legislature recognizes that federal regulations include requirements that pertain to contracts funded by federal-aid highway funds. One such requirement is that states must ensure that prime contractors pay subcontractors in full by no later than thirty days after the subcontractor’s work is satisfactorily completed. One option for meeting this requirement is to decline to hold retainage from prime contractors. The legislature also recognizes that retainage is currently used to ensure that claims against the contractor are resolved in a timely manner. The legislature intends that the contract bond provided by sureties on behalf of general contractors provides adequate security for claimants under the bond.” [2011 c 231 § 1.]

Report—2009 c 432: See RCW 18.27.800.

Part headings and captions not law—Effective dates—Severability—2007 c 494: See RCW 39.10.903 through 39.10.905.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.021 Excess over lien claims paid to contractor.

After the expiration of the forty-five day period for giving notice of lien provided in RCW 60.28.011(2), and after receipt of the certificates of the department of revenue, the employment security department, and the department of labor and industries, and the public body is satisfied that the taxes certified as due or to become due by the department of revenue, the employment security department, and the department of labor and industries are discharged, and the claims of material suppliers and laborers who have filed their claims, together with a sum sufficient to defray the cost of foreclosing the liens of such claims, and to pay attorneys’ fees, have been paid, the public body may withhold from the remaining retained amounts for claims the public body

may have against the contractor and shall pay the balance, if any, to the contractor the fund retained by it or release to the contractor the securities and bonds held in escrow.

If such taxes have not been discharged or the claims, expenses, and fees have not been paid, the public body shall either retain in its fund, or in an interest bearing account, or retain in escrow, at the option of the contractor, an amount equal to such unpaid taxes and unpaid claims together with a sum sufficient to defray the costs and attorney fees incurred in foreclosing the lien of such claims, and shall pay, or release from escrow, the remainder to the contractor.

[2009 c 432 § 6; 2007 c 218 § 94; 1992 c 223 § 3.]

Notes: Report—2009 c 432: See RCW 18.27.800.

Intent—Finding—2007 c 218: See note following RCW 1.08.130.

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

RCW 60.28.040 Tax liens—Priority of liens.

(1) Subject to subsection (5) of this section, the amount of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(2) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, from a contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more, the amount of all other taxes, increases, and penalties under Title 82 RCW, due and owing from the contractor, is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(3) Subject to subsection (5) of this section, after payment of all taxes, increases, and penalties due or to become due under Title 82 RCW, the amount of all taxes, increases, and penalties due or to become due under Titles 50 and 51 RCW from the contractor or the contractor's successors or assignees with respect to a public improvement contract wherein the contract price is thirty-five thousand dollars or more is a lien prior to all other liens upon the amount of the retained percentage withheld by the disbursing officer under such contract.

(4) Subject to subsection (5) of this section, the amount of all other taxes, increases, and penalties due and owing from the contractor is a lien upon the balance of such retained percentage remaining in the possession of the disbursing officer after all other statutory lien claims have been paid.

(5) The employees of a contractor or the contractor's successors or assignees who have not been paid the prevailing wage under such a public improvement contract shall have a first priority lien against the bond or retainage prior to all other liens.

[2014 c 97 § 301. Prior: 2009 c 432 § 7; 2009 c 219 § 7; 1985 c 80 § 1; 1971 ex.s. c 299 § 1; 1955 c 236 § 4; prior: 1949 c 228 § 27, part; Rem. Supp. 1949 § 8370-204a, part; RCW 82.32.250, part.]

Notes: Report—2009 c 432: See RCW 18.27.800.

Severability—Effective dates—1971 ex.s. c 299: See notes following RCW 82.04.050.

III

Selected Rules

(Washington Administrative Code)

NOTICE

This document contains sections of the Washington Administrative Code (WAC) rules that are current as of the date shown on the front cover. Changes to laws and/or rules may occur in legislative sessions or departmental rule-making. Please research the most current language of the WAC rules, which is available at **search.leg.wa.gov**. You may also contact the Prevailing Wage Program to obtain the most current laws.

Contact information is available at the back of this booklet.

Chapter 296-126 and 296-127 WAC Prevailing Wage Rules

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WAC 296-126-023 Payment interval.

(1) This rule shall apply to employers and employees subject to chapter 49.12 RCW.

Note: Employers and employees not subject to this regulation may still be subject to the payment interval requirements of WAC 296-128-035 or 296-131-010.

(2) Definitions:

(a) "Monthly interval" means a one-month time period between established pay days.

(b) "Pay day" means a specific day or date established by the employer on which wages are paid for hours worked during a pay period.

(c) "Payment interval" means the amount of time between established pay days. A payment interval may be daily, weekly, bi-weekly, semi-monthly or monthly.

(d) "Pay period" means a defined time frame for which an employee will receive a paycheck. A pay period may be daily, weekly, bi-weekly, semi-monthly or monthly.

(3) An employer shall pay all wages owed to an employee on an established regular pay day at no longer than monthly payment intervals. If federal law provides specific payment interval requirements that are more favorable to an employee than the payment interval requirements provided under this rule, federal law shall apply.

(4) If an employer pays wages on the basis of a pay period that is less than a month, the employer shall establish a regular pay day no later than ten calendar days after the end of the pay period, unless expressly provided otherwise by law.

Example 1: Employer establishes a weekly pay period. The workweek is from Sunday January 1 through Saturday January 7. Unless a different payment interval applies by law, the employer must pay wages no later than January 17.

Example 2: Employer establishes two semi-monthly pay periods (the first pay period covers the 1st day of the month to the 15th day of the month; the second pay period covers the 16th day of the month to the last day of the month). Unless a different payment interval applies by law, the employer must pay wages no later than the 25th day of the current month for the first pay period, and no later than the 10th day of the following month for the second pay period.

(5) If an employer pays wages on the basis of a monthly pay period, the employer may establish a regular payroll system under which wages for work performed by an employee during the last seven days of the monthly pay period may be withheld and included with the wages paid on the pay day for the next pay period.

Example: Employer establishes a monthly pay period starting on the 1st day of each month with an established pay day on the last day of the month. In a thirty-one-day month, unless a different payment interval applies by law, the employer must pay wages for work performed between the 1st and 24th days of the month on the established pay day (the last day of the month). The employer may pay wages for work performed between the 25th and 31st days of the current month on the following month's pay day (which means that the employer would pay wages for work performed between the 25th and 31st days of the current month, and the 1st and 24th days of the following month, on the following month's pay day).

If pay period is:	Then pay day must be no later than:	And employer must pay wages for at least:
Monthly, starting on 1st day of the month	Last day of the month	1st day of the month - 24th day of the month

(6) An employer shall pay overtime wages owed to an employee on the regular pay day for the pay period in which the overtime wages were earned. If the correct amount of overtime wages cannot be determined until after such regular pay day, the employer may establish a separate pay day for overtime wages; however, the payment of overtime wages may not be delayed for a period longer than that which is reasonably necessary for the employer to compute and arrange for payment of the amount due, and overtime wages must be paid by the regular pay day following the next pay period.

Example: Employer establishes two semi-monthly pay periods. The first pay period covers work performed from the 1st day of the month to the 15th day of the month with the pay day of the 25th; the second pay period covers the 16th day of the month with the pay day of the 10th of the following month. An employee works overtime in each of the pay periods. Unless a different payment interval applies by law, the employer must pay overtime wages no later than the 10th day of the following month for the overtime earned during the first pay period, and no later than the 25th day of the following month for the overtime earned during the second pay period.

If pay period is:	And if pay day for regular wages is:	Then pay day for overtime wages must be no later than:
1st of the month - 15th day of the month	25th of the month	10th of the following month
16th of the month - 30th or 31st of the month	10th of the following month	25th of the following month

(7) Mailed paychecks shall be postmarked no later than the established pay day. If the established pay day falls on a weekend day or holiday when the business office is not open, mailed paychecks shall be postmarked no later than the next business day. Employers that pay employees by direct deposit or other electronic means shall ensure that such wage payments are made and available to employees on the established pay day.

(8) These rules may be superseded by a collective bargaining agreement negotiated under the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., the Public Employees' Bargaining Act, RCW 41.56.010 et seq., or the Personnel System Reform Act, RCW 41.80.001 et seq., if the terms of, or recognized custom and practice under, the collective bargaining agreement prescribe specific payment interval requirements for employees covered by the collective bargaining agreement; provided, that:

(a) All regular wages (whether paid on an hourly, salary, commission, piece rate, or other basis) shall be paid to employees covered by the collective bargaining agreement ("covered employees") at no longer than monthly intervals;

(b) All other wages (including overtime, bonus pay, and other categories of specialty pay in addition to regular wages) are paid in accordance with the payment interval requirements applicable to covered employees under the terms of, or recognized custom and practice under, the collective bargaining agreement; and

(c) The employer pays regular wages to covered employees at no less than the applicable minimum wage rate.

[Statutory Authority: Chapters 49.12, 49.30, and 49.46 RCW. WSR 07-03-145, § 296-126-023, filed 1/23/07, effective 3/1/07. Statutory Authority: RCW 43.22.270, 49.12.020, 49.12.091, 49.12.050, 49.46.020 and 49.46.070. WSR 89-22-016 (Order 89-16), § 296-126-023, filed 10/24/89, effective 11/24/89; Order 74-9, § 296-126-023, filed 3/13/74, effective 4/15/74.]

WAC 296-126-040 Statements furnished.

(1) Every employer shall furnish to each employee at the time of payment of wages an itemized statement showing the pay basis (i.e., hours or days worked), rate or rates of pay, gross wages and all deductions for that pay period.

(2) An itemized pay statement means a separate written statement from the paycheck issued to employees on each payday. Pay periods shall be identified on the pay statement by month, day, year, and payment date.

(3) The pay statement may be furnished or made available electronically provided each employee has access to receive and copy it on the payday. If an employee cannot receive an electronic pay statement at work or at home on the established payday, the employer must provide a written pay statement to the employee on the payday.

[Statutory Authority: Chapter 49.12 RCW. 10-04-092, § 296-126-040, filed 2/2/10, effective 3/15/10; Order 74-9, § 296-126-040, filed 3/13/74, effective 4/15/74.]

WAC 296-127-010 Definitions for chapter 296-127 WAC.

(1) "Department" means the department of labor and industries.

(2) "Director" means the director of the department or his or her duly authorized deputy or representative.

(3) "Industrial statistician" means the industrial statistician of the department's employment standards, apprenticeship, and crime victims (ESAC) division.

(4) "Assistant director" means the assistant director of the employment standards, apprenticeship, and crime victims (ESAC) division or his or her duly authorized deputy or representative.

(5) "Contractor" means:

(a) The prime contractor, and each and every subcontractor, required to be registered under chapter 18.27 RCW and/or licensed under chapter 19.28 RCW, that performs any work on a public works project site, and/or is required to pay industrial insurance premiums as a construction company.

(b) Employers engaged in shipbuilding and ship repair, building service maintenance, and any fabricator or manufacturer that produces nonstandard items specifically for a public works project.

(c) Employers that contract with contractors or subcontractors for the purpose of the production and/or delivery of materials pursuant to the terms of WAC 296-127-018.

(6) The term municipality shall include every city, county, town, district, political subdivision, or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

(7)(a) The term "public work" shall include:

(i) All work, construction, alteration, enlargement, improvement, repair, and/or demolition that is executed by contract, purchase order, or any other legal agreement and that is executed at the cost of the state of Washington or of any municipality. The source of the funding shall not determine the applicability of the statute, and may include, but is not limited to, such sources as those payments made through contracts with insurance companies on behalf of the insured state or municipality;

(ii) All work, construction, alteration, enlargement, improvement, repair, and/or demolition which, by law, constitutes a lien or charge on any property of the state or of a municipality;

(iii) All work, construction, alteration, repair, or improvement, other than ordinary maintenance that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities, pursuant to RCW 39.04.260;

(iv) Maintenance, except ordinary maintenance as defined by (b)(iii) of this subsection, when performed by contract. Maintenance is defined as keeping existing facilities in good usable, operational condition;

(v) Janitorial and building service maintenance as defined by WAC 296-127-023, when performed by contract, on public buildings and/or assets; and

(vi) The fabrication and/or manufacture of nonstandard items produced by contract specifically for a public works project as defined by (a)(i) through (v) of this subsection.

(b) The term "public work" shall not include:

(i) Work, construction, alteration, enlargement, improvement, repair, demolition, and/or maintenance for which no wage or salary compensation is paid, consistent with the requirements of RCW 35.21.278;

*(ii) The construction, alteration, repair, or improvement of any municipal street railway system;

** (iii) Ordinary maintenance which is defined as work not performed by contract and that is performed on a regularly scheduled basis (e.g., daily, weekly, monthly, seasonally, semiannually, but not less frequently than once per year), to service, check, or replace items that are not broken; or work not performed by contract that is not regularly scheduled but is required to maintain the asset so that repair does not become necessary.

(8) "Contract" means a contract, purchase order, or any other legal agreement in writing for public work to be performed for a fixed or determinable amount, which is duly awarded

after advertisement and competitive bid. A contract that is awarded from a small works roster, or under the emergency provisions of state law, need not be advertised.

(9) "Residential construction" means construction, alteration, repair, improvement, or maintenance of single family dwellings, duplexes, apartments, condominiums, and other residential structures not to exceed four stories in height, including basement, when used solely as permanent residences. It does not include the utilities construction (water and sewer lines), or work on streets, or work on other structures (e.g., for recreation and business.)

[Statutory Authority: RCW 39.12.070. 94-01-100, § 296-127-010, filed 12/16/93, effective 1/16/94. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-010, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-010, filed 10/31/88. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-010, filed 1/17/86. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-010, filed 8/27/82.]

*Comment from L&I: Please note, in 1993 the definition of public work found in RCW 39.04.010 was changed to eliminate the exclusion of municipal street railway systems from the definition of public work.

**Comment from L&I: Case law narrowed the definition of "ordinary maintenance" to include only work performed by in-house employees of the public entity. See *City of Spokane v. Dept. of Labor & Industries*, 100 Wn. App. 805, 810 (2000).

WAC 296-127-011 Time for determining prevailing wage.

(1) Prevailing wage rates for all public work contracts will be determined by the industrial statistician and published on the first business day of February and the first business day of August of each year. These rates shall become effective thirty days after the date of publication. However, the industrial statistician may revise an established prevailing wage rate in response to an administrative or judicial finding overturning the established rate, or at any time necessary to correct an error, with such revision becoming effective thirty days after the date of publication. However, in the event of an emergency as determined by the director of the department, such revised rate shall take effect upon publication.

(2) The department shall establish deadlines for the submission of:

(a) Completed wage surveys, for inclusion of submitted data in the survey computations;

(b) Newly ratified collective bargaining agreements for inclusion in the semiannual prevailing wage publication;

(c) Notice of collectively bargained wage and benefit adjustments, and/or relevant contractual changes, for inclusion in the semiannual prevailing wage publication; and

(d) Notice of changes in apprenticeship standards and incremental wage rates for inclusion in the semiannual prevailing wage publication.

(3) The applicable prevailing wage rates for a given public works contract will be determined as follows:

(a) For all public works contracts, except janitorial or building service maintenance contracts, the applicable prevailing wage rates shall be the rates that are in effect on the date when bids by prime contractors are due for submission to contract awarding agencies. These rates shall remain in effect for the duration of the contract.

(b) If contracts are not awarded within six months of the date bids are due, the applicable prevailing wage rates shall be those that are in effect on the date the contract is awarded. These rates shall remain in effect for the duration of the contract.

(c) For work orders issued under job order contracts pursuant to chapter 301, Laws of 2003, the appropriate prevailing wage rates shall be the rates that are in effect on the date when the individual work order is issued.

(4) If a contract for public work is not awarded pursuant to bids, the applicable prevailing wage rates shall be those that are in effect on the date when the contract is executed. These rates shall remain in effect for the duration of the contract.

(5) A schedule of the applicable prevailing wage rates must be included by:

(a) Contract awarding agencies, in the bid specifications and contract documents for each contract.

(b) Contractors, in the bid and/or contract documents provided to subcontractors.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, 43.22.051, and 2003 c 301. 04-10-083, § 296-127-011, filed 5/4/04, effective 6/4/04. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-011, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-011, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-011, filed 8/27/82.]

WAC 296-127-013 Scope of work descriptions.

(1) In order to determine applicable prevailing wage rates, the director or his/her designee will issue scope of work descriptions for each trade and occupation recognized as being involved in public work.

(2) The scope of work descriptions shall be created using authoritative sources available to the department, such as:

(a) Washington state apprenticeship and training council approved apprenticeship standards;

(b) Collective bargaining agreements;

(c) Dictionaries of occupational titles;

(d) Experts from organized labor, licensed contractors, and contractors' associations;

(e) Recognized labor and management industry practice.

(3) The applicable prevailing wage rates for workers employed on public works projects shall be determined by the scopes of work performed by those workers, and not by their specific job titles.

(4) The applicable scope of work description for a public works contract is the scope of work description that is in effect on the date that the bids are due to be submitted to the contract awarding agency. If the contract is not awarded within six months of the bid due date, then the applicable scope of work description shall be that which is in effect on the date that the contract is awarded. The same scope of work description shall remain in effect for the duration of the contract.

(5) In the event a dispute arises regarding a scope of work description following the award of a public works contract, the aggrieved party may request an arbitration hearing pursuant to the provisions of RCW 39.12.060, WAC 296-127-060, 296-127-061, and 296-127-062.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270 and 43.22.051. 00-15-077, § 296-127-013, filed 7/19/00, effective 7/19/00. Statutory Authority: Chapters 39.04 and 39.12

RCW and RCW 43.22.270. 92-01-104, § 296-127-013, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-013, filed 10/31/88.]

WAC 296-127-014 Usual benefits.

(1) Employers are not required to establish “usual benefit” programs. If an employer chooses not to provide such benefits, however, wages paid must be at the full prevailing wage rate as defined by RCW 39.12.010.

(2) To be deemed a “usual benefit,” the following requirements must be satisfied:

(a) Employer payments for the usual benefit shall be made only in conformance with all applicable federal and state laws, including the requirements of the Employment Retirement Income Security Act of 1974, as amended, and of the Internal Revenue Service; and

(b) Employee payments toward the usual benefit, through self-contribution, payroll deduction, or otherwise, shall not constitute a credit to the employer for prevailing wage purposes.

(3) “Usual benefits” are limited to the following:

(a) Health and welfare payments. This is medical insurance, which may include dental, vision, and life insurance. Insurance programs providing protection against industrial accidents or occupational illnesses which are mandated by state or federal statutes, and all related mandatory forms of protection, shall not qualify as health and welfare insurance.

(b) Employer payments on behalf of a person employed for the purpose of providing retirement income.

(c) Vacation payments made either directly to the employees or into a vacation fund, provided these benefits are paid to the employees.

(d) Apprentice training fund. Payments made to training programs approved or recognized by the Washington state apprenticeship and training council.

(e) Paid holidays. Payments made to employees for specified holidays.

(4) Any fringe benefits required by other local, state, or federal laws do not qualify as “usual benefits.”

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-014, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-014, filed 10/31/88.]

WAC 296-127-01410 Information concerning prevailing wage usual benefits.

(1) Contractors and employers shall conform to all posting and employee notification requirements provided by applicable federal and state laws concerning usual benefits plans.

(2) Contractors and employers must have, and make available to the department upon request, copies of all documents concerning usual benefits, as identified in WAC 296-127-014, for which employer payments are made.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-01410, filed 12/18/91, effective 1/31/92.]

WAC 296-127-015 Applicability of prevailing wages for supervisors.

Determinations as to whether individuals are workers, laborers, or mechanics are based on the scope of work actually performed by the individuals, rather than the title of their occupations.

(1) Where additional supervisory duties are required of workers, laborers, or mechanics by statute or regulation, the industrial statistician shall establish a rate of pay for a work classification to be called "journey level in charge." These rates shall be published in the semiannual prevailing wage publication.

(2) Supervisors (e.g., foremen, general foremen, superintendents, etc.,) are entitled to receive at least the journey level prevailing rate of wage for performing manual or physical labor:

(a) For each hour spent in the performance of manual or physical labor if it is for more than twenty percent but less than fifty percent of their hours worked on a public works project during any given week.

(b) For all hours worked in any given week if they perform manual or physical labor for fifty percent or more of their hours worked on a public works project during such week.

(3) If supervisors subject to the journey level prevailing wage rate are paid a salary, the compensation (salary divided by number of hours worked) must be equal to or greater than the prevailing wage rate for the type of work performed.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-015, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-015, filed 10/31/88.]

WAC 296-127-017 Notice of wage determinations.

Current prevailing wage data will be furnished by the office of the industrial statistician upon request.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-017, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-017, filed 8/27/82.]

WAC 296-127-018 Coverage and exemptions of workers involved in the production and delivery of gravel, concrete, asphalt, or similar materials.

(1) The materials covered under this section include but are not limited to: Sand, gravel, crushed rock, concrete, asphalt, or other similar materials.

(2) All workers, regardless of by whom employed, are subject to the provisions of chapter 39.12 RCW when they perform any or all of the following functions:

(a) They deliver or discharge any of the above-listed materials to a public works project site:

(i) At one or more point(s) directly upon the location where the material will be incorporated into the project; or

(ii) At multiple points at the project; or

(iii) Adjacent to the location and coordinated with the incorporation of those materials.

(b) They wait at or near a public works project site to perform any tasks subject to this section of the rule.

(c) They remove any materials from a public works construction site pursuant to contract requirements or specifications (e.g., excavated materials, materials from demolished structures, clean-up materials, etc.).

(d) They work in a materials production facility (e.g., batch plant, borrow pit, rock quarry, etc.,) which is established for a public works project for the specific, but not necessarily exclusive, purpose of supplying materials for the project.

(e) They deliver concrete to a public works site regardless of the method of incorporation.

(f) They assist or participate in the incorporation of any materials into the public works project.

(3) All travel time that relates to the work covered under subsection (2) of this section requires the payment of prevailing wages. Travel time includes time spent waiting to load, loading, transporting, waiting to unload, and delivering materials. Travel time would include all time spent in travel in support of a public works project whether the vehicle is empty or full. For example, travel time spent returning to a supply source to obtain another load of material for use on a public works site or returning to the public works site to obtain another load of excavated material is time spent in travel that is subject to prevailing wage. Travel to a supply source, including travel from a public works site, to obtain materials for use on a private project would not be travel subject to the prevailing wage.

(4) Workers are not subject to the provisions of chapter 39.12 RCW when they deliver materials to a stockpile.

(a) A "stockpile" is defined as materials delivered to a pile located away from the site of incorporation such that the stockpiled materials must be physically moved from the stockpile and transported to another location on the project site in order to be incorporated into the project.

(b) A stockpile does not include any of the functions described in subsection (2)(a) through (f) of this section; nor does a stockpile include materials delivered or distributed to multiple locations upon the project site; nor does a stockpile include materials dumped at the place of incorporation, or adjacent to the location and coordinated with the incorporation.

(5) The applicable prevailing wage rate shall be determined by the locality in which the work is performed. Workers subject to subsection (2)(d) of this section, who produce such materials at an off-site facility shall be paid the applicable prevailing wage rates for the county in which the off-site facility is located. Workers subject to subsection (2) of this section, who deliver such materials to a public works project site shall be paid the applicable prevailing wage rates for the county in which the public works project is located.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.051 and 43.22.270. 08-24-101, § 296-127-018, filed 12/2/08, effective 1/2/09. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104 and 92-08-101, § 296-127-018, filed 12/18/91 and 4/1/92, effective 8/31/92.]

WAC 296-127-019 Survey methodology.

(1) The industrial statistician shall establish prevailing wage rates by:

(a) Conducting wage and hour surveys for established trades and occupations;

(b) Adopting the wage and benefit adjustments established in collective bargaining agreements for those trades or occupations where the most recently established prevailing wage rates were derived from a collective bargaining agreement; and/or

(c) In instances when the procedures established in (a) and (b) of this subsection are not feasible, employing other methods deemed appropriate by the industrial statistician as set out in subsection (8) of this section.

(2) The department will determine the identity of employers to be surveyed for a specific trade or occupation by:

(a) Mailing trade and occupation questionnaires to all contractors whose registration under chapter 18.27 RCW or license under chapter 19.28 RCW is active;

(b) Mailing trade and occupation questionnaires to Washington state department of transportation prequalified contractors; and

(c) Compiling and maintaining lists of employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, but that employ workers in building service maintenance, in shipbuilding or ship repair, in the fabrication and/or manufacture of nonstandard items produced specifically for a public works project, and/or in the production and delivery of materials as defined in WAC 296-127-018. Trades and occupations utilized by the shipbuilding and ship repair industries shall not have their survey data combined with their construction counterparts, for the purpose of establishing prevailing wage rates for that industry.

(3)(a) Wage survey forms will be mailed to:

(i) Those contractors and employers whose businesses currently are active and were active during the established survey period, and whose response to the trade and occupation questionnaire indicates that they employ one or more of the trades or occupations being surveyed; and

(ii) Labor unions representing workers in the trades or occupations being surveyed.

(b) The department annually shall mail to statewide trade associations and statewide labor organizations a proposed schedule of trades intended to be surveyed during the upcoming fiscal year. In addition, the department shall notify those statewide trade associations and labor organizations, reasonably known to be affected, of the mailing of wage surveys.

(4) Data reported on survey forms may be verified by the department, and will be used only when submitted on behalf of or by:

(a) Individual contractors identified by a contractor registration number that currently is valid, and was valid during the established survey period;

(b) Employers that are not required to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, that directly employ and supervise workers as employees in building service maintenance, in shipbuilding or ship repair, in the manufacture of nonstandard items specifically produced for a public works project, or in the production and delivery of materials, as defined in WAC 296-127-018;

(c) Labor unions submitting wage and hour data on behalf of contractors and/or employers who are signatory to those unions' collective bargaining agreements covering the trade or occupation being surveyed; or

(d) Interested parties providing wage and hour data by trade and occupation from certified payroll records and/or from hours reported by trade and occupation on affidavits of wages paid, according to guidelines established by the department.

(5) The department shall use affidavit forms that include a requirement that contractors report the actual number of hours worked by each trade and occupation utilized on the public works project for which the affidavit is filed.

(6) Valid data reported on wage surveys shall be calculated, as follows:

(a) If the majority of hours reported for a trade or occupation in the largest city in a county is paid at the same wage rate, then that rate shall be established as the prevailing wage rate.

(b) If the same wage rate is not reported to have been paid for the majority of hours reported in the largest city in a county for a trade or occupation, then the average wage rate shall be established as the prevailing wage rate, based on a weighted average of the hours, wages, and benefits reported in the largest city.

(c) If a statistically significant number of hours fails to be reported for the largest city in a county, then the average wage rate for the county is established as the prevailing wage, based on a weighted average.

*(d) If there fails to be reported for an entire county, sufficient hours to validate the survey data, that county's hours shall be combined with those reported for other counties that are adjacent, until the established hours threshold for validation has been met.

(7) Survey data will not be accepted if the data report the hours and wages of those who are exempt from the prevailing wage requirements of chapter 39.12 RCW, as defined in WAC 296-127-026.

(8)(a) The industrial statistician may utilize alternative methods to establish prevailing wage rates consistent with the terms of (b) of this subsection. These methods include, but are not limited to:

(i) The use of wage and hour data from the department of employment security;

(ii) The use of wage and hour data from the industrial insurance division of the department of labor and industries;

(iii) The use of data from surveys performed by the United States Department of Labor, wage and hour division; or

(iv) The use of wage and hour data reported to the department on affidavits of wages paid.

(b) These alternative methods will not be used for trades or occupations for which surveys had been completed as of the effective date of this section unless a subsequent survey produces insufficient data. In addition, these alternative methods may be used under circumstances that include, but are not limited to, the following:

(i) To establish prevailing wage rates for a new trade or occupation where a survey is not immediately feasible;

(ii) In response to an administrative or judicial determination of invalid wage rate or scope of work description;

(iii) In response to changes or additions in licensing, safety, or other requirements of other state agencies, departments or divisions; or

(iv) To establish rates for industries and trades and occupations generally not surveyed, in order to meet the requirement of having established wage rates for publication in contract or bid specifications as required by RCW 39.12.030.

(9) Any party that submits false information under this section shall, after a determination to that effect has been issued by the director after a hearing pursuant to chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-019, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-019, filed 10/31/88.]

*Comment from L&I: Please note in 2003 the use of data from adjacent counties to set prevailing wage rates is prohibited. See RCW 39.12.026.

WAC 296-127-020 Interpretation of phrases used in chapter 39.12 RCW.

(1) The "acceptance date of the public works project" referred to in RCW 39.12.065 is the date that the contract awarding agency formally accepts the completed public works project pursuant to state law.

(2) RCW 39.12.050 and 39.12.065 refer to "inadvertent filing or reporting error." The department defines an error as "inadvertent" if it is made by a contractor, as defined by WAC 296-127-010(5), or employer that shows that the error was made notwithstanding the use of due care by the contractor or employer. The burden of proving that an error is inadvertent rests with the contractor or employer charged with the error.

(3) The definition of “locality” in RCW 39.12.010(2) contains the phrase “wherein the physical work is being performed.” The department interprets this phrase to mean the actual work site. For example, if nonstandard items specifically produced for public works projects are prefabricated in a county other than the county wherein the public works project is to be completed, the wage for the off-site prefabrication shall be the applicable prevailing wage for the county in which the actual prefabrication takes place. Workers who deliver such nonstandard items, as well as materials pursuant to the terms of WAC 296-127-018, shall be paid the applicable prevailing wage for the county in which the public works project is located.

(4) In the implementation and enforcement of RCW 39.12.050 the terms “contractor” and “subcontractor” include an entity, however organized, with substantially identical corporate and/or operational structure to an entity that has been found to violate RCW 39.12.050. The factors used to determine substantial identity shall include an assessment of whether there is: Substantial continuity of the same business operation; use of the same machinery and/or equipment; similarity of jobs and types of working conditions; continuity of supervisors; and similarity of product or services.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-020, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-020, filed 1/17/86. Statutory Authority: RCW 39.12.015, 39.12.060 and HB 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-020, filed 8/27/82.]

WAC 296-127-021 Apprentice worker.

Any apprentice employed on public works projects for whom an apprentice agreement is registered and approved by the state apprenticeship council pursuant to chapter 49.04 RCW within 60 days of hiring may be considered an apprentice and paid the applicable prevailing hourly rate for an apprentice of that trade for all hours worked.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-021, filed 8/27/82.]

WAC 296-127-022 Overtime according to RCW 49.28.065.

(1) Work performed on public works contracts will not require the payment of overtime rates for the first two hours worked in excess of eight hours per day when the employer and employee voluntarily enter into an agreement wherein the employee will work up to ten hours per day in a four-day week to accomplish forty hours of work.

(2) Recognizing that there may be days when a full ten hours of work is not available, the remainder of the forty hours may be made up on another work day or days within the same work week, except work performed on Saturdays, Sundays, and holidays is subject to the established prevailing overtime provisions for a given trade or occupation, as provided in chapter 39.12 RCW.

(3) For the purpose of this section an agreement must:

(a) Have been authorized by employees who bargained collectively with their employers through representatives of their own choosing; or

(b) Be obtained in writing, signed, and dated by both parties; and

(c) Be entered into individually with each employee; and

(d) Be entered into separately for each public works project, except that an employer, at its option, may obtain an annual authorization; and

(e) State the name of the public works project with specificity; and

(f) Be entered into voluntarily by the employer and employee.

(4) Each employer must retain copies of the individual employee authorization agreements required pursuant to subsection (3) of this section for three years from the date of acceptance of the public works project by the contract awarding agency. Absence of an authorization record for an employee shall be deemed per se evidence of lack of that employee's authorization. Such records are payroll records, subject to the requirements of WAC 296-127-320.

(5) It is prohibited to work more than ten hours in any calendar day on a public works project except in cases of extraordinary emergency, such as danger to life or property.

(6) Notwithstanding the above provisions, overtime rates must be paid for all hours worked in excess of forty hours per week.

(7) This section provides a minimum public works overtime standard, and does not supersede prevailing overtime wage rates established under the authority of chapter 39.12 RCW.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-022, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 43.22.270. 88-19-055 (Order 88-21), § 296-127-022, filed 9/15/88.]

WAC 296-127-023 Building service maintenance.

The "public building service maintenance contracts" referred to in RCW 39.12.020 shall mean janitorial service contracts and cover only work performed by janitors, waxers, shampooers, and window cleaners.

For all building service maintenance contracts, the prevailing wage rates which are in effect on the date when the bids are required to be submitted to the contract awarding public agency are the minimum prevailing wage rates which must be paid for the first year of such contracts and thereafter. However, any building service maintenance contract of more than one year duration, must include wage increase language recognizing the potential for future variance in applicable prevailing wage(s) and specifying that the wages which a contractor shall pay its employees must be altered annually to recognize and follow the most recently promulgated increases in prevailing wages each year after the first year of the contract period. The cost of the increases in the wages due employees shall be borne by the contract awarding agency.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 88-22-046 (Order 88-22), § 296-127-023, filed 10/31/88.]

WAC 296-127-025 Applicability of joint federal-state standards.

(1) When a public works project is subject to the provisions of the Washington state public works law, chapter 39.12 RCW, and the Federal Davis-Bacon and related acts, the contractor and every subcontractor on that project must pay at least the Washington state prevailing wage rates, if they are higher than the federal prevailing wage rates for the project unless specifically preempted by federal law.

(2) When the federal prevailing wage rates are higher than the Washington state prevailing wage rates, the contractor shall pay the federal rate as required by federal law.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-025, filed 12/18/91, effective 1/31/92; 88-22-046 (Order 88-22), § 296-127-025, filed 10/31/88.]

WAC 296-127-026 Exemptions for sole owners and their spouses, partnerships, corporations, and employees of public agencies.

The prevailing wage requirements of chapter 39.12 RCW do not apply to:

(1) Sole owners and their spouses.

(2) Any partner who owns at least thirty percent of a partnership.

(3) The president, vice-president and treasurer of a corporation if each one owns at least thirty percent of the corporation.

* (4) Workers regularly employed on monthly or per diem salary by the state or any political subdivision created by its laws.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 88-22-046 (Order 88-22), § 296-127-026, filed 10/31/88.]

*Comment from L&I: Please note the words “on a monthly or per diem salary” have been deleted from the statute on which this rule is based. See RCW 39.12.020.

WAC 296-127-030 Irrigation district exemption.

Contracts awarded by irrigation districts for the reclamation or development of waste or undeveloped lands are not covered by the prevailing wage law, pursuant to RCW 39.04.010. Any work, construction alteration, repair or improvement that is not solely for the reclamation or development of waste or undeveloped land is covered by the prevailing wage laws and therefore subject to all the laws and regulations contained in and adopted pursuant to chapter 39.12 RCW.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-030, filed 8/27/82.]

WAC 296-127-040 Statement of intent to pay prevailing wages.

(1) All statements of intent to pay prevailing wages submitted to the industrial statistician of the department shall be accompanied by the fee set in RCW 39.12.070 for each statement. Fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through agreement with the department certifies statements of intent for its own contracts shall provide to the industrial statistician each month the number of statements of intent certified and quarterly shall send the fee set in RCW 39.12.070 for each statement of intent to pay prevailing wages it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. 08-17-072, § 296-127-040, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. 94-01-100, § 296-127-040, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. 90-24-053, § 296-127-040, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 88-22-046 (Order 88-22), § 296-127-040, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-040, filed 8/27/82.]

WAC 296-127-045 Affidavit of wages paid.

(1) All affidavits of wages paid submitted to the industrial statistician of the department shall be accompanied by the fee set in RCW 39.12.070 for each affidavit of wages paid. All fees shall be made payable to the department of labor and industries.

(2) Any agency, division, or department of the state of Washington which through

agreement with the department certifies affidavits of wages paid for its own contracts shall provide to the industrial statistician each month the number of affidavit of wages paid it has certified and quarterly shall send the fee set in RCW 39.12.070 for each affidavit of wages paid it has certified. This fee shall be sent to the industrial statistician and be made payable to the department of labor and industries.

[Statutory Authority: Chapter 39.12 RCW, RCW 43.22.270, and 2008 c 285. 08-17-072, § 296-127-045, filed 8/19/08, effective 9/19/08. Statutory Authority: RCW 39.12.070. 94-01-100, § 296-127-045, filed 12/16/93, effective 1/16/94. Statutory Authority: RCW 43.22.270. 90-24-053, § 296-127-045, filed 12/3/90, effective 1/3/91. Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 88-22-046 (Order 88-22), § 296-127-045, filed 10/31/88. Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-045, filed 8/27/82.]

WAC 296-127-050 Filing of statements of intent to pay prevailing wages and affidavits of wages paid for contracts under two thousand five hundred dollars.

A contract awarding agency may, as part of a public works contract, enter into an agreement with a contractor to approve statements of intent to pay prevailing wages and affidavits of wages paid on behalf of the department for contracts wherein the total amount does not exceed two thousand five hundred dollars as provided in RCW 39.12.040(2), pursuant to the following terms:*

- (1) The agreement must be incorporated into the bid specifications and contract document;
- (2) Statement of intent forms and affidavit of wages paid forms, provided by the department, must be filed with the contract awarding agency by the contractor prior to the disbursement of public funds;
- (3) Contract awarding agencies must retain copies of all statements of intent to pay prevailing wages received pursuant to this section for a period of not less than three years;
- (4) Contract awarding agencies must send to the department copies of all affidavits of wages paid received pursuant to this section within thirty days of receipt from the contractor;
- (5) The contract awarding agency shall accept full responsibility and liability for payment of any valid wage claims directly to the claimant;
- (6) The contract awarding agency may proceed against any contractor found to have violated the provisions of the statute, and may debar such contractor from consideration for future contracts for up to one year and will provide the department with the names and contractor registration or other employer identification numbers of any such debarred contractors within thirty days of the debarment; and
- (7) Contract awarding agencies and contractors shall not enter into contracts or agreements to perform public work that subdivide or otherwise disaggregate any public works project of more than two thousand five hundred dollars, to enable such public works project to be awarded pursuant to this section.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-050, filed 12/18/91, effective 1/31/92.]

*Comment from L&I: In 2007 the Legislature passed SHB 1328. In accordance with that Legislation, for small works under \$35,000 awarded under the process in RCW 39.04.155(3), the public contract awarding agency may choose to use an alternate process and accept liability therefor. See the L&I website at www.Lni.wa.gov/TradesLicensing/PrevWage/IntentAffidavits/SmallWorks.

WAC 296-127-060 Director of department of labor and industries to arbitrate disputes — General provisions.

(1) The contract executed between a public authority and the successful bidder or contractor and all of his subcontractors shall contain a provision that in case any dispute arises as to what are the prevailing rates of wages for a specific trade, craft or occupation and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director, and his decision shall be final, conclusive, and binding on all parties involved in the dispute.

(2) In exercising his authority to hear and decide disputes the director shall consider among other things, timeliness, the nature of the relief sought, matters of undue hardship or injustice, or public interest. A “timely” request for arbitration is one received within 30 days after the contract has been awarded.

(3) Any party in interest who is seeking a modification or other change in a wage determination under RCW 39.12.015, and who has requested the industrial statistician to make such modification or other change and the request has been denied, after appropriate reconsideration by the assistant director shall have a right to petition for arbitration of the determination.

(a) For purpose of this section, the term “party in interest” is considered to include, without limitation:

(i) Any contractor, or an association representing a contractor, who is likely to seek or to work under a contract containing a particular wage determination, or any worker, laborer or mechanic, or any council of unions or any labor organization which represents a laborer or mechanic who is likely to be employed or to seek employment under a contract containing a particular wage determination, and

(ii) Any public agency concerned with the administration of a proposed contract or a contract containing a particular wage determination issued pursuant to chapter 39.12 RCW.

(b) For good cause shown, the director may permit any party in interest to intervene or otherwise participate in any proceeding held by the director. A petition to intervene or otherwise participate shall be in writing, and shall state with precision and particularity:

(i) The petitioner’s relationship to the matters involved in the proceedings; and

(ii) The nature of the presentation which he would make. Copies of the petition shall be served on all parties or interested persons known to be participating in the proceeding, who may respond to the petition. Appropriate service shall be made of any response.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-060, filed 8/27/82.]

WAC 296-127-061 Requests for arbitration.

(1) The petition for arbitration (original and four copies) shall be filed with Director, Department of Labor and Industries, General Administration Building, Olympia, Washington 98504.* In addition, copies of the petition shall be served personally or by mail upon each of the following:

(a) The public agency or agencies involved,

(b) The industrial statistician, and

(c) Any other person (or the authorized representatives of such person) known to be interested in the subject matter of the petition.

(2) The director shall under no circumstances request any administering agency to postpone any contract performance because of the filing of a petition. This is a matter

which must be resolved directly with the administering agency by the petitioner or other party in interest.

(3) A petition for arbitration of a wage determination shall:

(a) Be in writing and signed by the petitioner or his counsel (or other authorized representative), and

(b) Identify clearly the wage determination, location of project or projects in question, and the agency concerned, and

(c) State that the petitioner has requested reconsideration of the wage determination in question and describe briefly the action taken in response to the request, and

(d) Contain a short and plain statement of the grounds for review, and

(e) Be accompanied by supporting data, views, or arguments, and

(f) Be accompanied by a filing fee of \$75.00. Fees shall be made payable to the department of labor and industries.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-061, filed 8/27/82.]

*Comment from L&I: Requests for arbitration pursuant to WAC 296-127-061(1) should be addressed to and filed with: Director, Department of Labor & Industries, P.O. Box 44001, Olympia, WA 98504-4001. The physical address for the Director, Department of Labor & Industries, is 7273 Linderson Way SW, Tumwater, WA 98501.

WAC 296-127-062 Conduct of arbitration hearing.

(1) Interested persons other than the petitioner shall have a reasonable opportunity as specified by the director in particular cases to submit to the director written data, views, or arguments relating to the petition. Such material (original and four copies) shall be filed with the Director, Department of Labor and Industries, General Administration Building, Olympia, Washington 98504* and be accompanied by a filing fee of \$35.00. Fees shall be made payable to the department of labor and industries. Copies of any such material shall be served on the petitioner and other interested persons.

(2) Each party in interest shall have the right to appear in person or by or with counsel or other qualified representatives in any proceeding before the director. If all parties agree, oral testimony may be waived and arguments submitted in writing.

(3) Upon his own initiative or upon motion of any interested person or party, the director may consolidate in any proceeding or concurrently consider two or more appeals which involve substantially the same persons or parties, or issues which are the same or closely related, if he finds that such consolidation or concurrent review will contribute to an efficient review and to the ends of justice, and it will not unduly delay consideration of any such appeals.

(4) The director shall prescribe the time and place for hearing. The director shall schedule the hearing within 45 days of the request. For good cause shown, the director may allow a continuance at the request of a party in interest.

(a) With respect to any proceeding before him, the director may upon his own initiative or upon the request of any interested person or party direct the interested persons or parties to appear before the director at a specified time and place in order to simplify the issues presented or to take up any other matters which may tend to expedite or otherwise facilitate the disposition of the proceeding.

(b) All papers submitted to the director under this section shall be filed with the Department of Labor and Industries, General Administration Building, Olympia,

Washington 98504. An original and four copies of all papers shall be submitted. Service under this part shall be by the filing party or interested person; service may be personal or may be by mail. Service by mail is complete on mailing.

(5) The final disposition shall be by the director.

(a) The director may decline review of any case whenever in his judgment a review would be inappropriate or because of the lack of timeliness, the nature of the relief sought, or other reasons.

(b) The director shall decide the case upon the basis of all relevant matter contained in the entire record before him but the director may utilize his experience, technical competence, and specialized knowledge in evaluating the evidence.

(c) Upon reasonable notice to the parties or interested persons, the director may vary the procedures specified in this part in particular cases.

(6) The director may allow all parties a period of ten days for filing post-hearing briefs prior to closing the record and concluding the hearing.

(7) The director shall issue a written decision within 30 days of the conclusion of the hearing. A copy shall be sent to each party in interest.

[Statutory Authority: RCW 39.12.015, 39.12.060 and House Bill 795, 1982 1st ex.s. c 38. 82-18-041 (Order 82-28), § 296-127-062, filed 8/27/82.]

*Comment from L&I: The correct filing address for purposes of WAC 296-127-062(1) and WAC 296-127-062(4)(b) is: Director, Department of Labor & Industries, P.O. Box 44001, Olympia, WA 98504-4001. The physical address for the Director, Department of Labor & Industries, is 7273 Linderson Way S.W., Tumwater, WA 98501.

WAC 296-127-130 Filing of complaint.

Any interested party, as defined in RCW 39.12.010(4) may file with the department a complaint alleging a violation of the prevailing wage laws. The complaint must describe the alleged violation and identify the alleged violator. It would aid the department's investigation if the complaint also specifies:

- (1) The name and address of the complainant;
- (2) The address of the alleged violator;
- (3) The name and address of the public agency that awarded the contract;
- (4) The date the public agency accepted the completed public work (if applicable);
- (5) The specific rates of wages paid by the violator and the rates that allegedly should be paid;
- (6) The exact amount of prevailing wages that are alleged to remain unpaid; and
- (7) The date the bids were due on the public works project.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-130, filed 1/17/86.]

WAC 296-127-140 Investigation of complaint.

(1) The department shall investigate a complaint filed by an interested party unless the complaint was filed more than thirty days after the date the public agency accepted the public work that gave rise to the complaint. The department may, in its sole discretion, investigate a complaint filed more than thirty days after the acceptance date. However, the department may not charge a contractor with a violation of RCW 39.12.065 if the complaint is filed after the thirty-day limit.

The department's investigation shall determine whether a violation of RCW 39.12.065 or 39.12.050, or both, or of any other provision of chapter 39.12 RCW, occurred.

(2) If the department's investigation substantiates a complaint that alleges that a contractor has violated RCW 39.12.065, the department is required to attempt to collect unpaid wages for the contractor's employees. During the investigation, the department should be able to identify the affected employees. The department shall direct to the affected employees the best notice practicable under the circumstances, including individual notice to all employees who can be identified through reasonable effort. The notice shall inform the employee that (a) the department's final order, whether favorable or not, will apply to all employees; (b) any employee may, if he or she desires, move to intervene as a party in any hearing held as a result of the investigation; and (c) that the employee may have a private right of action to collect unpaid prevailing wages.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-140, filed 1/17/86.]

WAC 296-127-150 Notice of violation.

(1) If the department determines after its investigation that there is reasonable cause to believe that the prevailing wage law has been violated, the department shall notify the violator of its determination. The notice of violation shall be served on the violator personally or by certified mail.

(2) The notice of violation shall:

(a) Describe concisely the violation;

(b) Specify which statute or statutes were violated;

(c) If known, identify the laborers, workers, and mechanics who are affected by the violation;

(d) If known, state the amount of unpaid prevailing wages the violator owes;

(e) State that an employee cannot by contract or agreement waive the right to receive the prevailing wage;

(f) State the penalty that the department will assess for a violation, if any, of RCW 39.12.065 and 39.12.050; and

(g) State the date the complaint was filed with the department.

(3) RCW 39.12.065 and 39.12.050 establish the penalty amounts.

(4) If the notice alleges a violation of RCW 39.12.065, the department shall serve a copy of the notice of violation on the violator's sureties under chapters 39.08, 18.27, 19.28, and 60.28 RCW.

(5) The notice of violation shall inform the violator and, if a violation of RCW 39.12.065 is alleged, its sureties that they may request a hearing on the violations, the amount of unpaid prevailing wages owed, or the penalties assessed. The notice shall specify that if no hearing is requested within thirty days of the date of issuance of the notice the director shall issue a final, unappealable order finding that the violation did occur, ordering the violator to pay any unpaid prevailing wages, and assessing penalties.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-150, filed 1/17/86.]

WAC 296-127-160 Appeal of notice of violation.

The violator or any of its sureties who are interested in the matter may request a hearing on a notice of violation. One original and four copies of the request must be filed with the director within thirty days after the date the department issued the notice.

The party requesting the hearing must also serve a copy of the notice on all interested sureties and, if the requestor is a surety, on the violator.

The request for hearing must be in writing and must specify:

- (1) The name and address of the party requesting the hearing;
- (2) The notice of violation that is being appealed;
- (3) The items of the notice of violation that the requestor believes are erroneous; and
- (4) The reasons the notice of violation is erroneous.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-160, filed 1/17/86.]

WAC 296-127-170 Hearing on notice of violation.

(1) The director may hear the appeal personally or may delegate the authority to hold the hearing and draft a proposed decision to an administrative law judge pursuant to chapter 34.12 RCW. The plaintiff in the hearing shall be the department, and the defendants shall be the violator and its interested sureties. The department shall have the burden of proving, by a preponderance of the evidence, that the violations occurred and that any wages were unpaid as stated in the notice.

(2) Any interested party may upon motion, be allowed to intervene as a plaintiff in the hearing. "Standing" shall be construed broadly to effectuate the remedial purposes of the prevailing wage law. An interested party, whether or not admitted as a plaintiff, may submit written arguments and affidavits. The parties shall be given an opportunity to respond to or rebut any arguments and affidavits before the person presiding over the hearing makes his or her decision.

(3) The hearing shall be conducted in accordance with the Uniform procedure rules, chapter 1-08 WAC.

(4) If the director presides over the hearing, the director shall issue a final decision that includes findings of fact and conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both.

(5) If an administrative law judge presides over the hearing, she or he shall issue a proposed decision that includes findings of fact, conclusions of law, and if appropriate an order to pay unpaid prevailing wages, a penalty, or both. The proposed decision shall be served by certified mail or personally on the violator, the interested sureties, the department, and any interested parties who have intervened as plaintiffs. Any of these parties, if aggrieved by the proposed decision, may appeal to the director within thirty days after the date of issuance of the proposed decision. If none of the parties appeals within thirty days, the proposed decision may not be appealed either to the director or the courts.

(6) An appellant must file with the director an original and four copies of its notice of appeal. The notice of appeal must specify which findings and conclusions are erroneous. The appellant must attach to the notice the written arguments supporting its appeal.

The appellant must serve a copy of the notice of appeal and the arguments on the other parties. The respondent parties must file with the director their written arguments within thirty days after the date the notice of appeal and the arguments were served upon them.

(7) The director shall review the proposed decision in accordance with the Administrative Procedure Act, chapter 34.04 RCW. The director may: Allow the parties to present oral arguments as well as the written arguments; require the parties to specify the portions of the record on which the parties rely; require the parties to submit additional information by affidavit or certificate; remand the matter to the administrative

law judge for further proceedings; and require a departmental employee to prepare a summary of the record for the director to review. The director shall issue a final decision that can affirm, modify, or reverse the proposed decision.

(8) The director shall serve the final decision on all parties. Any aggrieved party may appeal the final decision to superior court pursuant to RCW 34.04.130 unless the final decision affirms an unappealed proposed decision. If no party appeals within the period set by RCW 34.04.130, the director's decision is conclusive and binding on all parties.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-170, filed 1/17/86.]

WAC 296-127-180 Effect of final decision finding a violation of RCW 39.12.065.

If the director issues a final decision that includes a finding that a contractor violated RCW 39.12.065 and that the contractor owes unpaid prevailing wages, and the finding is not timely appealed or is affirmed by the courts, the findings and the decision are res judicata in any action by the department or by any interested party who was a plaintiff at the hearing, against the contractor and its sureties to recover the unpaid prevailing wages. The findings and decision are not res judicata in any action by an interested party who was not a plaintiff at the hearing.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-180, filed 1/17/86.]

WAC 296-127-190 Filing of lien against retainage or bonds.

(1) Upon receipt of a timely complaint that a contractor has violated RCW 39.12.065, and that the contractor owes unpaid prevailing wages, the department may file a lien against the retainage or bond obtained by the contractor under RCW 60.28.010.

(2) Upon issuance by the director of a final decision that finds that a contractor has violated RCW 39.12.065 or 39.12.050, and that sets a civil penalty for the violation, the department shall file liens for the penalty amount against the retainage and bonds the contractor obtained under RCW 39.12.065 (2)(c), 39.08.010, and 60.28.010.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-190, filed 1/17/86.]

WAC 296-127-200 Surety bond payable to director.

(1) RCW 39.12.065 (2)(c) authorizes the director to require a contractor to obtain a surety bond "running to the director in the amount of the violation found." The intent and wording indicates that the director may require such a bond only after issuing a final decision finding that the contractor has violated RCW 39.12.065.

(2) The director may demand that a violating contractor post the bond when:

(a) The director has issued a final decision that finds that the contractor owes unpaid prevailing wages or a penalty, whether or not the decision has been appealed to the courts; and

(b) The retainage or bonds provided under RCW 60.28.010, 18.27.040, and 19.28.120 are or may be insufficient to pay the amount of prevailing wages or the penalty owed.

(3) A contractor may at any time voluntarily obtain a bond running to the director to guarantee the payment of the prevailing wages and any penalty. The contractor may allow the director to satisfy any claim for unpaid wages or the penalty from this bond instead of from the retainage or bonds obtained under RCW 60.28.010, 18.27.040, 19.28.120, and 39.08.010.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-200, filed 1/17/86.]

WAC 296-127-210 Suit against retainage and bonds.

(1) If the director issues a final decision that includes a finding that the contractor has violated RCW 39.12.065 or 39.12.050, and the finding is not timely appealed or is affirmed by the courts, the department may file suit against the appropriate retainage and bonds to recover the amount of unpaid prevailing wages or the civil penalty.

(2) The department may, before issuance of a final decision, file suit against the appropriate retainage and bonds to recover unpaid prevailing wages if the filing of a suit is necessary to preserve the claim. The suit shall be held in abeyance pending the exhaustion of administrative remedies.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-210, filed 1/17/86.]

WAC 296-127-220 Distribution of recovery.

(1) Upon making a recovery pursuant to RCW 39.12.065(2) against a contractor's retainage or bonds, the department shall distribute the proceeds and any award of attorneys' fees and costs as follows:

(a) The recovery shall be paid to the employees of the violator who did not receive the correct prevailing wage. The distribution among employees shall be based on the evidence of wage loss produced at the hearing on the violation.

(b) Next shall be paid the costs the department incurred in making the recovery. The department shall pay these costs from the attorney's fees and costs awarded by the courts.

(2) A contractor who is the subject of an investigation or who has received a notice of violation may choose not to contest the matter and may tender to the department the amount of unpaid prevailing wages the department determines is owed. The department, after identifying and notifying the affected employees pursuant to WAC 296-127-140, shall accept the tender if the contractor in writing acknowledges that the department, by accepting the tendered amount, does not absolve the contractor from liability to any employee for unpaid prevailing wages.

(3) If an employee for whom the department has recovered unpaid prevailing wages cannot be found, the department shall retain the wages for the one-year period required by RCW 63.29.150. After the statutory period has lapsed, the department shall pay the wages to the department of revenue in accordance with RCW 63.29.170.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-220, filed 1/17/86.]

WAC 296-127-300 Filing and service.

All papers required to be filed with the director under this chapter or chapter 39.12 RCW shall be addressed to Director, Department of Labor and Industries, General Administration Building, Olympia, WA. 98504.*

Filing and service shall be made as allowed by WAC 1-08-090 through 1-08-140.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-300, filed 1/17/86.]

*Comment from L&I: The correct filing address for purposes of WAC 296-127-300 is: Director, Department of Labor & Industries, P.O. Box 44001, Olympia, WA 98504-4001. The

physical address for the Director, Department of Labor & Industries, is 7273 Linderson Way S.W., Tumwater, WA 98501.

WAC 296-127-310 List of violators.

The department shall maintain a list of all contractors who are forbidden to bid on a public works project, or to have a bid accepted, pursuant to RCW 39.12.065(3) or 39.12.050. To the extent required by RCW 39.12.065(3) and 39.12.050, the industrial statistician shall refuse to certify any statement of intent to pay the prevailing wage or affidavit of wages paid that he or she determines was submitted by a contractor on the list. Because the department receives a large number of requests for certification, the department shall not be liable to any person or entity for certifying a statement or an affidavit of a contractor on the list.

The industrial statistician shall make the list available upon request.

[Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-310, filed 1/17/86.]

WAC 296-127-320 Payroll.

(1) Each contractor shall keep accurate payroll records for three years from the date of acceptance of the public works project by the contract awarding agency, showing the name, address, Social Security number, trade or occupation, straight time rate, hourly rate of usual benefits as defined by WAC 296-127-014(1), and overtime hours worked each day and week, including any employee authorizations executed pursuant to WAC 296-127-022, and the actual rate of wages paid, for each laborer, worker, and mechanic employed by the contractor for work performed on a public works project.

(2) A contractor shall, within ten days after it receives a written request, from the department or from any interested party as defined by RCW 39.12.010(4), file a certified copy of the payroll records with the agency that awarded the public works contract and with the department.

(3) A contractor's noncompliance with this section shall constitute a violation of RCW 39.12.050.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-320, filed 12/18/91, effective 1/31/92. Statutory Authority: RCW 39.12.050, 39.12.065, 43.22.270 and 51.04.020. 86-03-063 (Order 85-28), § 296-127-320, filed 1/17/86.]

WAC 296-127-400 Applicability.

WAC 296-127-400 through 296-127-470 are issued pursuant to RCW 39.12.022, authorizing the director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, to issue special subprevailing wage certificates for employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury at wages lower than the prevailing rate applicable under RCW 39.12.020. Subprevailing wage certificates shall be subject to the conditions prescribed in these regulations.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-400, filed 9/17/90, effective 10/18/90.]

WAC 296-127-410 Definitions.

For the purposes of WAC 296-127-400 through 296-127-470:

(1) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an

individual found by the secretary of social and health services to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(2) “Handicapped worker” means an individual whose earning capacity for the work to be performed is impaired by physical or mental deficiency or injury.

(3) “Prevailing rate” means the prevailing rate of wage as defined in RCW 39.12.010 and as determined by the industrial statistician.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-410, filed 9/17/90, effective 10/18/90.]

WAC 296-127-420 Application for a subprevailing wage certificate.

(1) Nonprofit vocational rehabilitation programs may apply for a subprevailing wage certificate authorizing the employment of one or more handicapped workers with a developmental disability at less than the prevailing rate. An application for each worker shall be filed with the office of the industrial statistician not less than annually upon forms approved by the director or an authorized representative of the director.

(2) The application shall be signed jointly by the employer, the handicapped worker for whom such application is being made, and by the parent or guardian of the handicapped worker except as otherwise authorized by the director or an authorized representative of the director.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-420, filed 9/17/90, effective 10/18/90.]

WAC 296-127-430 Conditions for granting a subprevailing wage certificate.

(1) A subprevailing wage certificate may be issued to a nonprofit vocational rehabilitation program if the application is in proper form and sets forth facts showing:

(a) A wage below prevailing rate is necessary to prevent curtailment of the handicapped worker's opportunities for employment;

(b) The handicap impairs the earning capacity of the worker for the work to be performed;

(c) The percentage of full productivity at which the handicapped worker functions; and

(d) A description of the duties to be performed by each handicapped worker;

(e) The nature of the disability; and

(f) An addendum containing a detailed explanation of the nature of the disability.

(2) The industrial statistician shall not require a nonprofit vocational rehabilitation program to provide the information required in subsection (1)(f) of this section if it provides a notarized copy of a federal certificate granted by the United States department of labor under section 14(c) of the Federal Fair Labor Standards Act and any documentation deemed necessary by the industrial statistician identifying the workers with a developmental disability, a description of the duties to be performed, and the percentage of productivity at which each worker functions.

(3) The director or an authorized representative of the director may require the submission of additional information to that required by subsection (1) or (2) of this section shown on the application and may require the handicapped worker to take a medical examination where it is deemed necessary in order to determine whether or not the issuance of a certificate is justified.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-430, filed 9/17/90, effective 10/18/90.]

WAC 296-127-440 Issuance of a subprevailing wage certificate.

If the application and other available information indicate that the requirements of this regulation are satisfied, the director or an authorized representative of the director may issue a subprevailing wage certificate. If issued, copies of the subprevailing wage certificate shall be mailed to the employer, the handicapped worker, and to the parent or guardian of the handicapped worker. If denied, the employer, the handicapped worker, and the parent or guardian of the handicapped worker shall be given written notice of the denial.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-440, filed 9/17/90, effective 10/18/90.]

WAC 296-127-450 Terms of subprevailing wage certificate.

(1) A subprevailing wage certificate shall specify, among other things, the names of the handicapped workers, the name of the employer, the duties to be performed by the handicapped worker, the percentage of the prevailing rate authorized to be paid, and the period of time during which that percentage of the prevailing rate may be paid. A certificate shall also indicate that the percentage of the prevailing rate to be paid a handicapped worker shall change to reflect an increase or decrease in the worker's productivity when the worker's productivity is determined to change.

(2) A subprevailing wage certificate shall be effective for a period of one year or less as designated by the director or an authorized representative of the director. A handicapped worker employed under such certificate may be paid at the specified percentage of the prevailing rate only during the effective period of the certificate.

(3) Notwithstanding the requirements of chapter 49.46 RCW and its administrative regulations, the percentage of the prevailing rate authorized to be paid shall be fixed at a figure designed to reflect adequately the percentage of productivity at which the handicapped worker functions.

(4) Any money received by a handicapped worker by reason of any state or federal pension or compensation program for handicapped persons shall not be considered as offsetting any part of the wage or remuneration due the handicapped worker by the employer.

(5) A handicapped worker shall be paid not less than one and one-half times the rate specified in the subprevailing wage certificate for hours worked in excess of forty hours per workweek or eight hours per day.

(6) The terms of any subprevailing wage certificate, including the percentage of the prevailing rate authorized to be paid, may be amended by the director or an authorized representative of the director upon written notice to the parties concerned, if the facts justify such amendment.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-450, filed 9/17/90, effective 10/18/90.]

WAC 296-127-460 Renewal of subprevailing wage certificate.

Application for renewal of any subprevailing wage certificate shall be filed in the same manner as an original application. An application for renewal shall include the most recent evaluation conducted within the past year of the productivity level at

which the handicapped worker functions. If such application has been filed prior to the expiration date of the certificate, the certificate shall remain in effect until the application for renewal has been granted or denied.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-460, filed 9/17/90, effective 10/18/90.]

WAC 296-127-470 Review.

Any person aggrieved by any action of the director or an authorized representative of the director taken pursuant to this regulation may, within fifteen days after notice of such action has been mailed, file with the director a petition for review of the action complained of, setting forth grounds for seeking such review. If reasonable grounds exist, the director or an authorized representative of the director may grant such review and to the extent deemed appropriate afford all interested persons an opportunity to be heard on such review.

[Statutory Authority: RCW 39.12.022. 90-19-061, § 296-127-470, filed 9/17/90, effective 10/18/90.]

WAC 296-127-990 Severability.

If any provision of this chapter or its application to any persons or circumstances is held invalid by state or federal court, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.

[Statutory Authority: Chapters 39.04 and 39.12 RCW and RCW 43.22.270. 92-01-104, § 296-127-990, filed 12/18/91, effective 1/31/92.]

Contact Information

Prevailing Wage Program

Mailing Address:	Department of Labor & Industries P. O. Box 44540 Olympia, WA 98504-4540	360-902-5335 1-855-545-8163 fax 360-902-5300
Street Address:	7273 Linderson Way SW Tumwater, WA 98501	
E-mail:	pw1@Lni.wa.gov	
On the Web:	www.PrevailingWage.Lni.wa.gov	
E-mail Listserve:	If you would like to receive e-mail on Prevailing Wage updates and information, sign up for the Prevailing Wage Listserve at www.PrevailingWage.Lni.wa.gov and click on "Join this e-mail list."	

Washington State Apprenticeship Program

Mailing Address:	Department of Labor & Industries P. O. Box 44530 <i>Olympia, WA 98504-4530</i>	360-902-5320
On the Web:	www.Apprenticeship.Lni.wa.gov	

Other Contacts

Contractor Registration	www.Contractors.Lni.wa.gov	360-902-5226
Electrical Licensing	www.ElectricalRenew.Lni.wa.gov	360-902-5269
Employment Standards	www.WorkplaceRights.Lni.wa.gov	1-866-219-7321
Workers' Compensation (premium status)	www.Insurance.Lni.wa.gov/uninsured	1-866-902-5360
Washington State Auditor's Office	www.sao.wa.gov	1-866-902-3900
United States Department of Labor	www.dol.gov	1-866-487-2365

Department of Labor & Industries Office Locations

Aberdeen	415 W Wishkah Street, Suite 1C	360-533-8200
Bellevue	616 120th Avenue NE, Suite C201	425-990-1400
Bellingham	1720 Ellis Street, Suite 200	360-647-7300
Bremerton	500 Pacific Avenue, Suite 400	360-415-4000
East Wenatchee	519 Grant Road E	509-886-6500
Everett	729 100th Street SE	425-290-1300
Kelso	711 Vine Street	360-575-6900
Kennewick	4310 W 24th Avenue	509-735-0100
Moses Lake	3001 W Broadway Avenue	509-764-6900
Mount Vernon	525 E College Way, Suite H	360-416-3000
Port Angeles	1605 E Front Street, Suite C	360-417-2700
Pullman	1250 Bishop Boulevard SE, Suite G	509-334-5296
Seattle	315 5th Avenue S, Suite 200	206-515-2800
Spokane	901 N Monroe Street, Suite 100	509-324-2600
Tacoma	950 Broadway, Suite 200	253-596-3800
Tukwila	12806 Gateway Drive S	206-835-1000
Tumwater	7273 Linderson Way SW	360-902-5799
Vancouver	312 SE Stonemill Drive, Suite 120	360-896-2300
Yakima	15 W Yakima Avenue, Suite 100	509-454-3700

Upon request, foreign language support and formats for persons with disabilities are available. Call 1-800-547-8367. TDD users, call 360-902-5797. L&I is an equal opportunity employer.